

Dobrich, et al.
Gregory Hastings

v.
C.A. # 15-120 (JJF)

Indian River School District, et al.
October 13, 2006

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

3
4 MONA DOBRICH and MARCO DOBRICH, individually and
as parents and next friend of ALEXANDER DOBRICH,
5 SAMANTHA DOBRICH, JANE DOE and JOHN DOE,
individually and as parents and next friend of
6 JORDAN DOE and JAMIE DOE,
7 Plaintiffs

Civil Action
NO. 15-120

8 vs.
9 INDIAN RIVER SCHOOL DISTRICT, ET AL.,
10 Defendants

11
12 Deposition of GREGORY HASTINGS, taken
pursuant to notice at the Indian River School
13 District, 31 Hosier Street, Selbyville, Delaware,
beginning at 9:07 a.m. on October 13, 2006 before
14 David A. Sroka, Registered Professional Reporter and
Notary Public.

15
16 APPEARANCES:

17 THOMAS ALLINGHAM, ESQ.
RICHARD HORVATH
BRIAN LENHARD
18 P.O. Box 636
Wilmington, Delaware 19899-0636
19 For the Plaintiffs
20 JARROD D. SHAW, ESQ.
Drinker Biddle & Reath, LLP
21 One Logan Square
Philadelphia, Pennsylvania 19103-6996
22 For the Defendants
23
24

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1 MS. DUPHILY: This is the
2 videotape deposition of Mr. Greg Hastings,
3 taken by the Plaintiff, in the
4 matter of Dobrich, et al. versus Indian
5 River School District, at al., case
6 number 15-120.
7 The deposition is taking place at 31
8 Hosier Boulevard, Selbyville, Delaware. We
9 are going on the record on October 13,
10 2006 at approximately 9:07 a.m.. The court
11 reporter is Dave Sroka from the firm of
12 Wilcox & Fetzer. My name is Lindsay
13 duPhily and I am with Discovery Video
14 Services in association with Wilcox &
15 Fetzer.
16 I will now ask counsel to
17 identify themselves on the record, and then
18 the court reporter will swear in the
19 witness.
20 MR. ALLINGHAM: I am Tom Allingham
21 representing the Plaintiffs. With me are
22 Rick Horvath and Brian Lenhard.
23 MR. SHAW: Jarrod Shaw
24 representing the defendants.

1 Q. And it was against you in your capacity as
2 a School Board member?
3 **A. Capacity as a School Board member?**
4 Q. Yes, sir?
5 **A. Yes.**
6 Q. Have you ever testified at trial?
7 **A. I have been an expert witness in Small**
8 **Claims Court, that's the extent of it.**
9 Q. Did the court issue an opinion in that
10 case?
11 **A. Yes.**
12 Q. Were you mentioned in the opinion?
13 **A. I don't believe so.**
14 Q. What was your area of expertise in that
15 testimony?
16 **A. I had provided architectural design for the**
17 **product. This has been a long time, too but --**
18 Q. Let me cut you off. It has nothing to do
19 with issues of religion in the schools, right?
20 **A. No. thank you, no.**
21 Q. What is your -- I am trying to keep this
22 limited to the issues here. You are employed as an
23 architect?
24 **A. Yes, I own a small architectural design**

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1 GREGORY HASTINGS,
2 The Witness herein, called for examination by
3 the Plaintiffs, having been duly sworn to tell the
4 truth, the whole truth, and nothing but the truth,
5 was examined and testified as follows:
6 EXAMINATION BY MR. ALLINGHAM:
7 Q. Good morning, Mr. Hastings. I am going to
8 ask you to clear up something that has been bugging
9 me. Is it H-O-S-I-E-R or H-O-O-S-I-E-R? Is it
10 pronounced Hoosier or Hosier?
11 **A. In this area we pronounce it Hosier.**
12 Q. Do you know how it's spelled?
13 **A. I believe it's one O.**
14 Q. Thanks. Have you ever been deposed before?
15 **A. Yes, I have, yes.**
16 Q. In what context?
17 **A. As a defendant.**
18 Q. What kind of a case?
19 **A. It was a teacher in our high school and**
20 **there was -- she brought on a suit, I have to**
21 **reflect, this has been 12 years, I guess.**
22 Q. All right, I don't need that much detail.
23 That was a suit by a teacher?
24 **A. Yes.**

1 **firm, well, yes.**
2 Q. Locally?
3 **A. Locally.**
4 Q. Down here somewhere?
5 **A. Yes, Ocean View.**
6 Q. Were you trained as an architect?
7 **A. Yes. Well, I have a degree, architectural**
8 **degree from Del Tech. And again that was many years**
9 **ago, but I own this small residential design firm**
10 **which is CGH Developments, which is commercial**
11 **development properties for rental properties.**
12 Q. Are you still engaged in architectural
13 design?
14 **A. Yes.**
15 Q. Mr. Hastings, what did you do to prepare
16 for this deposition?
17 **A. Aside from being briefed from our attorneys**
18 **nothing. I am too busy.**
19 Q. When did you meet with your attorneys?
20 **A. Last week.**
21 Q. Who was present at the time?
22 **A. Jason, this young man and another young**
23 **man.**
24 Q. Jason Gosselin and Jarrod Shaw. You would

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1 be surprised at how frequently witnesses can't
2 remember the name, or the full name of their lawyer.
3 Was it just the two lawyers and you, or were there
4 other people as well?
5 **A. There were other Board members. In my**
6 **position now I would have to say I am a former Board**
7 **member.**
8 Q. Yes.
9 **A. So, there were present and former Board**
10 **members present.**
11 Q. Who were the members present?
12 **A. Mr. Bireley, Dr. Hattier, Mr. Evans and Mr.**
13 **Helms.**
14 Q. How long did you meet?
15 **A. Approximately two and a half hours.**
16 Q. Where did you meet?
17 **A. This room.**
18 Q. Sitting around the table basically?
19 **A. Yes.**
20 Q. Did anybody have any documents?
21 MR. SHAW: I object to documents
22 that were shown to the client as privilege
23 work product. You can ask him if he used
24 any documentsto refresh his recollection

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1 for the deposition.
2 MR. ALLINGHAM: Are you
3 instructing the witness not to answer?
4 MR. SHAW: I am.
5 MR. ALLINGHAM: You are
6 directing the witness not to answer a
7 question not directed to what documents,
8 but simply whether there were documents
9 present at the meeting?
10 MR. SHAW: You can answer whether
11 there were documents present at the
12 meeting.
13 **A. I did not review any documents.**
14 Q. So, there was some documents here in the
15 room, but you didn't look at anything?
16 **A. No.**
17 Q. Did anybody read from any documents during
18 the meeting?
19 MR. SHAW: I object, and I am
20 going to instruct the witness not to
21 answer.
22 MR. ALLINGHAM: Precisely the
23 same as were there any documents present in
24 the room.

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1 MR. SHAW: You can answer yes if
2 somebody read from documents, but I
3 instruct you not to answer specifically who
4 or what was said.
5 Q. I am going to ask you a series of
6 preliminary questions, in which I am trying to
7 determine whether there were documents there or
8 whether documents were read from for the purpose of
9 refreshing anyone's recollection. I do not want to
10 know what the document was, and I do not want to
11 know the content of what was read for purposes of
12 these questions, okay?
13 If they were used to refresh I am just
14 going to ask you questions about what the documents
15 were. If they weren't, I am not entitled to those,
16 all right? I just need yes or no answers, okay?
17 So, my question is did anyone read from a
18 document at the meeting?
19 **A. I believe so. I would have to say that I**
20 **am not really clear to the extent of the document or**
21 **form of the document that Jason might have read**
22 **from. He was just briefing us on points to expect**
23 **from this deposition. That's about it, as elaborate**
24 **as I can get.**

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1 Q. Do you -- this is probably my last question
2 in this sequence of questions. Did any of the
3 material that Mr. Gosselin read to you refresh your
4 recollection about the events leading up to this
5 lawsuit beginning in June of 2004?
6 **A. I recall he didn't verbatim read events,**
7 **with other Board members sitting here, in my**
8 **opinion, not being in attendance to the last ten**
9 **Board meetings.**
10 MR. SHAW: I am going to instruct
11 the witness to limit his response to your
12 specific question. He is going beyond the
13 scope of your question into attorney/client
14 privilege as to what was discussed between
15 counsel and the defendants. I am going to
16 instruct him not to answer.
17 MR. ALLINGHAM: Let me pose my
18 question again.
19 Q. Did anything Mr. Gosselin read to you
20 refresh your recollection about factual events? I
21 think in order to help Mr. Shaw, can we just have a
22 yes or no answer to that question, if you can give a
23 yes or no answer?
24 **A. Repeat your question?**

3 (Pages 6 to 9)

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1 Q. Did any of the material Mr. Gosselin read
2 to you at the meeting last week refresh your
3 recollection about factual events?
4 **A. Yes.**
5 Q. What was it that refreshed your
6 recollection about factual events that he read to
7 you?
8 **A. The board meetings, two specific Board**
9 **meetings going back into '04, July and August of**
10 **'04, when the Plaintiff attended the Board meeting.**
11 Q. I am inferring from that what was read from
12 weren't minutes of the meeting?
13 **A. No.**
14 Q. What did he read from?
15 **A. I am not sure what he had in hand.**
16 Q. Tell me as best you can recall what the
17 words were that he read? If you have to summarize
18 it in your own words, do that.
19 **A. He asked questions --**
20 MR. SHAW: I am instructing the
21 witness not to discuss questions that Jason
22 did, but restrict his answer to any
23 document that was produced by us to you
24 that you may have a copy of which Jason

1 argument about this. We agree on one
2 thing, that is if Mr. Hastings says those
3 documents refreshed his recollection I am
4 entitled to probe that, correct?
5 MR. SHAW: If he was shown a
6 document and it refreshed his recollection,
7 yes.
8 MR. ALLINGHAM: I don't think
9 there is a distinction between being shown
10 a document and being read to from a
11 document. And so -- and I think you agree
12 with me, because we were going down that
13 path. And so we have the testimony
14 that Mr. Gosselin read from a document to
15 Mr. Hastings and that the document that was
16 read from to Mr. Hastings, whether it was
17 one or more, refreshed his recollection
18 about factual events.
19 I am now asking Mr. Hastings what
20 it was that refreshed his recollection, and
21 my question had been what event did it
22 refresh your recollection about, and those
23 are perfectly appropriate questions.
24 MR. SHAW: Only if the documents

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1 would have read at that meeting.
2 MR. ALLINGHAM: In light of the
3 testimony from you Mr. Shaw, the
4 instructions that you are giving us --
5 MR. SHAW: You are asking
6 questions about attorney/client privilege.
7 MR. ALLINGHAM: Mr. Shaw, I
8 waited until you were done, I would like
9 you to wait until I am done, okay? Are you
10 providing us testimony that all the
11 documents that were presented to the
12 witnesses at this meeting were
13 documents which you have produced to us?
14 MR. SHAW: Mr. Allingham, I am not
15 providing testimony in this case. What I
16 am saying is that you are infringing upon
17 the attorney/client privilege of a meeting
18 that we had in anticipation of this
19 deposition.
20 Now, I agree you can ask whether
21 or not he refreshed his recollection with
22 any specific documents. If Jason chose
23 to read that is attorney work product.
24 MR. ALLINGHAM: We can have a big

1 which were read from are produced in this
2 litigation.
3 MR. ALLINGHAM: That's where we
4 disagree. I don't agree. I think if
5 Mr. Hastings is shown a phone book that
6 refreshed his recollection about something
7 I am entitled to see that phone book.
8 MR. SHAW: Do you think that if
9 Jason produced a document analyzing the
10 theory of the case that you are entitled to
11 that?
12 MR. ALLINGHAM: If that refreshed
13 Mr. Hastings' factual recollection, yes.
14 MR. SHAW: You do?
15 MR. ALLINGHAM: Yes.
16 MR. SHAW: I disagree.
17 MR. ALLINGHAM: You can direct
18 the witness not to answer, whatever if you
19 want to, but if you are instructing him not
20 to answer, then you can make an
21 objection, but let's proceed with my
22 questions, which you can see are at least
23 intended to elicit material that I think is
24 appropriate for me to elicit. If you have

4 (Pages 10 to 13)

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1 a disagreement with that, about a
2 particular question, you can instruct the
3 witness not to answer.
4 Q. It may be that colloquy will help you Mr.
5 Hastings, in understanding what we are trying to get
6 at. I don't want to know advice that Mr. Gosselin
7 and Mr. Shaw gave you. I do want to know the
8 substance of any document that was shown to you that
9 refreshed your recollection of factual events, or
10 the substance of any document that was read to you,
11 which in my view, is the same thing, that refreshed
12 your recollection of factual events.
13 Sometimes that's hard for the witness to
14 know, but that's the distinction that I am trying to
15 draw, okay? Now, let's just ask some questions, all
16 right?
17 So far we have established that
18 Mr. Gosselin read to you from one or more documents
19 and that what he read you refreshed your
20 recollection about the factual events of July and
21 August appearances by Mrs. Dobrich at the School
22 Board meetings, correct?
23 A. Yes.
24 Q. Tell me, in as much detail as you can, what

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1 Mr. Gosselin was reading from?
2 A. No, I did not.
3 Q. But you are able to tell me that he was not
4 reading from the minutes of the meetings?
5 A. I am not sure what he was reading from.
6 MR. ALLINGHAM: We'll send you a
7 letter on this, Mr. Shaw, but we believe we
8 are entitled to the production of documents
9 used to refresh the witness' recollection,
10 but we will make a formal request.
11 Q. Okay, the next question in this fairly
12 conventional sequence is, about what factual events
13 did Mr. Gosselin's reading these documents refresh
14 you? Was it what Mrs. Dobrich said at those
15 meetings, or was it something else?
16 A. It was the Plaintiff's comment at the
17 public portion of our agenda that we were refreshed,
18 and the content of her comment at the July Board
19 meeting.
20 Q. You should testify however you want, but
21 there is more than one Plaintiff in this case, and
22 so it may be ambiguous if you say the Plaintiff, and
23 I have tried in my questions to say Mrs. Dobrich or
24 Mrs. Doe of the Doe or the Dobrich family, and you

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1 Mr. Gosselin read to you that refreshed your
2 recollection about those events?
3 A. Tell you in detail about those documents
4 that he read?
5 Q. Let me explain what I am trying to get at.
6 If you had the power to repeat verbatim what
7 Mr. Gosselin read from the documents, that's what I
8 would want. I don't believe that any of us, most of
9 us anyway, don't have that power, so what I'd like
10 you to tell me, in as much detail as you can, is
11 what you recollect Mr. Gosselin read to you that
12 refreshed your recollection?
13 A. I would have to say the gist of what he
14 read were statements that reflected back on the
15 public setting of July's Board meeting and August's
16 Board meeting in '04, where Mrs. Dobrich, Plaintiff,
17 came to the Board meeting and expressed her concern
18 about the prayer, excuse me, in July's Board meeting
19 in particular, about the prayer that was given at
20 the commencement program in June.
21 Q. Do you know what document Mr. Gosselin was
22 reading from or documents?
23 A. No, I do not.
24 Q. Were you able to see the document that

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1 might want to do the same because it will be clearer
2 on the transcript?
3 A. Okay.
4 Q. At the meeting last week did you ask to
5 have your recollection refreshed, that is, did you
6 say I can't remember what Mrs. Dobrich said or when
7 she said it, do you have anything that would help me
8 out on that?
9 A. Repeat your question, please?
10 Q. It's a question of who initiated the
11 refresh the recollection process. Did you say I
12 just can't remember -- for example, I just can't
13 remember what Mrs. Dobrich said, do you have any
14 document that would reflect that, or was this a
15 process that was initiated by the lawyers?
16 A. I would say it was not initiated by the
17 lawyers.
18 Q. But it wasn't initiated by you either?
19 A. The recollection of events two years ago
20 was good for me because it was two years ago.
21 Q. Well, maybe I should ask a more general
22 question. How did this process of refreshing the
23 witnesses' recollection at this meeting last week
24 begin, who initiated it?

5 (Pages 14 to 17)

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1 **A. I was asked to be here because our**
2 **attorneys wanted to brief us on the events that were**
3 **about to take place with this deposition.**

4 Q. Other than your attorneys did you
5 communicate -- other than your attorneys and the
6 current Board members who were with you at the
7 meeting last week, have you talked to anyone else
8 about this deposition?

9 **A. I was in attendance to a DSBA Board meeting**
10 **evening before last, where Mr. Bireley and**
11 **Mrs. Bunting were in attendance, and they just**
12 **commented how lengthy these depositions were**
13 **occurring, and that was the extent.**

14 Q. They commented, both Mr. Bireley and Mrs.
15 Bunting?

16 **A. Yes.**

17 Q. Had Mrs. Bunting been deposed at that
18 point?

19 **A. No. She was conveying information that Mr.**
20 **Bireley had forwarded to her about how long his**
21 **depose was.**

22 Q. Anything else said about the depositions?

23 **A. No.**

24 Q. Did anyone say anything about the lawyers

1 who's estimating it, 6, 7, 800 people there. It was
2 a very well attended meeting. And we are frankly
3 trying to figure out how that happened. Some, at
4 least one of the witnesses has testified,
5 Mrs. Bunting testified that she heard scuttlebutt,
6 hearsay, whatever that church members in the
7 community were urging fellow church members to
8 attend that meeting.

9 So, I am -- that's what I am trying to get
10 at. So, my question to you is, did you or to your
11 knowledge any member of your family encourage or
12 urge or otherwise speak to members of your
13 congregation about attending the August 24th board
14 meeting at which the School Board prayer issue was
15 going to be discussed?

16 **A. No.**

17 Q. Do you know whether any other member of
18 your church urged members of your church to attend
19 that meeting?

20 **A. I do not.**

21 Q. Are you aware of anyone else urging anybody
22 to attend the August 24th Board meeting?

23 **A. No, I'm not.**

24 Q. So, to close the loop on the global

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1 harassing the witnesses?

2 **A. No.**

3 Q. Or treating them in a disrespectful or
4 discourteous way?

5 **A. No.**

6 Q. Anything about belittling the witnesses?

7 **A. No.**

8 Q. That's good. What is your religious
9 affiliation, if any?

10 **A. Christian. I am a member of the Methodist**
11 **church here locally.**

12 Q. Which one?

13 **A. Grace United in Millsboro.**

14 Q. And apart from being a member do you have
15 any other role in that church?

16 **A. Currently I'm a member of our foundation**
17 **fund, that's one of our subcommittees.**

18 Q. Did you or anyone in your family discuss
19 with anyone from that church the possibility of that
20 person's attending the August 24, 2004 Board
21 meeting?

22 **A. Repeat that?**

23 Q. Yeah, it's a little complicated. The
24 August 24, 2000 Board meeting had, depending on

1 question, you can she had no light on how the
2 attendance, the public attendance at the August 24th
3 Board meeting spiked a bit?

4 **A. I cannot.**

5 Q. How long did you serve as a member of the
6 Indian River School Board?

7 **A. Approximately 12 and a half years.**

8 Q. And you went off, let me see if I have this
9 right, the spring of 2005?

10 **A. No, I had to step down from that position**
11 **December 13, '05. I went through senate**
12 **confirmation November 8th of '05. I sat, attended**
13 **my first Board meeting December 15, '05 the state**
14 **level.**

15 Q. So, let's see, 12 and a half years, so you
16 were elected in 1993?

17 **A. That's correct.**

18 Q. Is it your understanding that as a member
19 of the Indian River School Board your primary
20 responsibility was to the children who are students
21 in the District schools?

22 **A. Yes.**

23 Q. And in making your decisions throughout
24 your 12 year tenure it was the students' interests

6 (Pages 18 to 21)

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1 that you held paramount, correct?
2 **A. Correct.**
3 Q. Is it also correct that a Board member may
4 take into account the interests of other
5 constituencies, for example, teachers, tax payers,
6 district employees and administrators, but all in
7 the context of serving the educational interests of
8 the children?
9 **A. Can you expand on the question?**
10 Q. Let me try to rephrase it. Well, let me
11 ask the preliminary question first. In your view
12 may a board member take into account in making his
13 decisions the interests of constituencies other than
14 the children?
15 **A. I don't know how to respond. Can you ask**
16 **the question again?**
17 Q. Are the children the only people whose
18 interests a Board member may take into account in
19 making decisions as a School Board member?
20 **A. Sitting on the Board you have to look at**
21 **the entire picture, in my opinion.**
22 Q. That was what my earlier question was
23 trying, I guess not very effectively to get at. In
24 looking at the entire picture is it the children's

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1 interests that, educational interests, that are the
2 ultimate goal when you make your decisions?
3 **A. Oh, absolutely.**
4 Q. Okay. Is it also correct that while a
5 Board member should look at the, as you say the
6 whole picture, a Board member is not permitted to
7 use his position as a Board member to serve his own
8 interests?
9 **A. You are asking is it appropriate that Board**
10 **member not serve at his own interests.**
11 Q. Let me ask the question, I think it must
12 have been unclear. In your view, is it permitted
13 for a Board member to make a decision that serves
14 his own interests in a way that is apart from the
15 total interest of the School District, his own
16 individual interest, if you will?
17 **A. In my opinion it's not permitted.**
18 Q. And the Board has an ethics policy that
19 specifically prohibits Board members from doing so,
20 isn't that right?
21 **A. To a degree.**
22 Q. What do you mean by that?
23 **A. I think if I recollect the policy, a policy**
24 **has been revised more recent than when I initially**

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1 **got on the Board.**
2 Q. Oh, that's a good point, I'm sorry, my
3 question wasn't specific enough. During 2004 the
4 board had an ethics policy that prohibited Board
5 members from serving their own interests, their own
6 individual interests, correct?
7 **A. Yes.**
8 Q. Am I right that you served as president of
9 the Board for a period of time?
10 **A. That's correct.**
11 Q. When was that?
12 **A. '99 to 2001.**
13 Q. One of the issues that's been joined in
14 this case is the history of the district's practice
15 of opening its Board meetings with a prior. During
16 your entire 12 and a half year tenure did the board
17 open its regular Board meetings with a prior?
18 **A. Always.**
19 Q. Did it open its special meetings with a
20 prayer?
21 **A. I don't believe so.**
22 Q. Did it open its executive sessions with a
23 prayer?
24 **A. Executive session's part of the main**

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1 **agenda, no.**
2 Q. I always try to listen to what may not be
3 said in an answer. Are there executive sessions
4 that are not part of the main agenda?
5 **A. No.**
6 Q. In your earlier answer by describing
7 executive sessions that are part of the main agenda
8 did you have any purpose in describing the executive
9 sessions that particular way?
10 **A. My opinion we have a formal agenda.**
11 Q. Uh-hum?
12 **A. That's our usual protocol, and just like**
13 **public session, there is an item on the agenda**
14 **executive session is an item on our agenda. We have**
15 **to vote to go into executive session, but it's part**
16 **of our main structure format for the meeting.**
17 Q. Are you meaning to suggest that therefore
18 since the regular meeting opens with a prayer the
19 executive session falls under the rubric of that
20 original prayer?
21 **A. Yes.**
22 Q. Are you aware of executive sessions that
23 take place before the prayer is offered at the
24 regular Board meeting?

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1 **A. On occasion.**
2 Q. And so there are some executive sessions
3 that take place before the regular prayer, do you
4 recall that any such executive session has itself
5 opened with a prayer?
6 **A. No.**
7 Q. The School Board Prayer Policy, was that
8 ever, during the entire Board consideration of that
9 policy, was that policy ever discussed at public
10 sessions of the Board meetings?
11 **A. Was that specific policy ever discussed at**
12 **a regular board meeting in public --**
13 Q. Public session, yes?
14 **A. Yes.**
15 Q. Do you know when that occurred?
16 **A. Specifically in the wake of Mrs. Dobrich**
17 **coming to the board meeting and expressing concern**
18 **and enlightening the Board on her concern about our**
19 **prayer issue, and so in the wake of that situation**
20 **we had discussion in public session regarding our**
21 **policy.**
22 Q. And was that public comment by members of
23 the audience or public consideration or deliberation
24 or discussion by Board members of the topic in

1 Q. And that's because the public is entitled
2 to observe the deliberative process of the Board in
3 adopting its policies, correct?
4 **A. That's correct.**
5 Q. Is there a term for that, public
6 deliberation on policies? I'm not suggesting there
7 is or isn't, I have some memory that there may be a
8 specific word that is applied to that process?
9 **A. Not that I recall.**
10 Q. Sir, I'm showing you what we have marked in
11 an earlier deposition as PX17. This is the, as you
12 will see from looking at the last page and
13 Mrs. Hobbs' signature, this is the official minutes
14 for the August 24 Board meeting.
15 And what I'd like you to do is take as much
16 time as you want, to show me, or direct my attention
17 to that portion of the minutes that reflects public
18 consideration or public deliberation by the Board on
19 the school board prayer policy?
20 **A. It would be on page six Policy Committee**
21 **first reading, bottom of the page.**
22 Q. Okay, that's the graduation prayer --
23 **A. Yeah.**
24 Q. Policy.

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1 public session or both?
2 **A. You will have to ask that again.**
3 Q. Too long, eh? Did the Board ever
4 deliberate on or consider the Board policy on School
5 Board Prayer at public sessions?
6 **A. Did we?**
7 Q. Yes.
8 **A. In public setting?**
9 Q. Yes.
10 **A. Yes.**
11 Q. And that was as you recall following
12 Mrs. Dobrich's coming to the Board and expressing
13 her concerns?
14 **A. That's correct.**
15 Q. Was that at the August 24th meeting?
16 **A. I'm not sure if it was August or September.**
17 Q. Those are the two possibilities, though,
18 correct?
19 **A. Yes.**
20 Q. Okay. Can I have the minutes of the two?
21 As a Board member do you believe that it is
22 beneficial for the Board to consider policies at
23 public session?
24 **A. Yes.**

1 **A. Yes.**
2 Q. I was talking about the School Board Prayer
3 Policy, BDA.1?
4 **A. That's all that was discussed.**
5 Q. Okay, so we can eliminate the August 24
6 meeting as the venue for public deliberation on the
7 School Board Prayer Policy, is that right?
8 **A. Yes.**
9 Q. Let me show you what we have previously
10 marked as PX18, which is the official minutes of the
11 September 28, 2004 Board meeting. And same question
12 here, take as much time as you want, Mr. Hastings,
13 but would you point me to that portion of the
14 minutes where there was public deliberation on the
15 School Board Prayer Policy, and you may want to look
16 at page six of the minutes?
17 **A. Just first reading of policy on page six.**
18 Q. Okay. Now, do you have a recollection that
19 there was a discussion or deliberation by the Board
20 substantively on the policy at that time, or was the
21 policy simply identified and submitted for a first
22 reading?
23 **A. I don't recall the extent.**
24 Q. We are fortunate in having a tape of this

8 (Pages 26 to 29)

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1 meeting. I can play that portion of the tape for
2 you and then I have a couple of questions about what
3 occurred.

4 MR. SHAW: Has the tape been
5 entered into evidence as an exhibit?

6 MR. ALLINGHAM: It has not. All
7 right, why don't you take it out for a
8 minute, Rick. I want to please have marked
9 as PX52. Let me have the case, we will
10 mark the case. Actually, let's mark the
11 disk itself and we are going to mark it as
12 PX52.

13 (WHEREUPON, Exhibit PX52 was
14 marked for identification)

15 Q. All right, we are now going to play for you
16 a portion of the PX52 which runs from 11 minutes and
17 45 seconds into the meeting. So, we will play that
18 portion of the tape.

19 MR. SHAW: Do you mind if I
20 bring the speaker closer?

21 MR. ALLINGHAM: Oh, you won't have
22 any trouble hearing it. And so the record
23 is clear, this is actually a CD which has
24 been made from the tapes that were

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1 produced. Better yet you produced the CD
2 from the tapes.

3 MR. SHAW: We try.

4 (AT THIS POINT A TAPE WAS PLAYED)

5 Q. That is the extent of discussion of the
6 School Board Prayer Policy BDA.1 at the September 28
7 Board meeting. It runs from 11 minutes 45 seconds
8 to 12 minutes and 32 seconds and you just heard the
9 entirety of it. Would you characterize that as
10 public consideration of or public deliberation on
11 the School Board Prayer Policy by the Board?

12 A. Yes.

13 Q. Would you tell me in what way you consider
14 that to be public consideration or public
15 deliberation?

16 A. We acknowledged the prayer, or we
17 acknowledged the policy, or alleged policy, and then
18 we were given the opportunity to either talk to
19 constituents, if need be, or constituents had the
20 freedom liberty to conduct us, or we as Board
21 members can contact the policy committee with
22 concerns or any specifics.

23 Q. Would you agree with me that there was no
24 opportunity for the public to observe the Board's

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1 deliberations on the School Board Prayer Policy
2 during the clip that I just played you?

3 A. Would I agree? Repeat that, please?

4 Q. Would you agree that there was no
5 opportunity for the public to observe Board
6 deliberations on the School Board Prayer Policy
7 during the clip that I just played you?

8 A. Yes.

9 Q. In fact, the public did not have access to
10 the text of that policy during the September 28
11 meeting, did they?

12 A. Not to my knowledge.

13 Q. And there is this process of a first and
14 second reading for Board policies, but they are not
15 actually read out loud, is that correct?

16 A. It depends on the individual Board member,
17 it depends on the setting, it depends on -- it could
18 depend on many things, but it's a line item up for
19 discussion, or debate, or to -- for a concern to be
20 carried or followed up with at a later date.

21 Q. Let me just follow up on that a little bit.
22 You said it is a line item that is up for discussion
23 or concern or to be followed up with at a later
24 date. At the September 28 Board meeting there was

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1 no discussion of the Board policy on School Board
2 prayer, correct?

3 A. Correct.

4 Q. At the September 28, 2004 Board meeting
5 there were no concerns of any kind expressed about
6 the Board policy on School Board prayer, correct?

7 A. Correct.

8 Q. And do you know whether anyone followed up
9 with any discussion or concern of the Board policy
10 on School Board prayer in public at any later date?

11 A. I do not.

12 Q. In your earlier answer to my question about
13 reading, and what does a first reading or a second
14 reading mean, I take it that sometimes proposed
15 policies are in fact read aloud at a Board meeting?

16 A. Yes.

17 Q. Do you know why School Board Prayer Policy
18 was not read out loud?

19 A. No, I don't.

20 Q. Was there any discussion about whether to
21 read School Board Prayer Policy aloud at the
22 September 28 Board meeting?

23 A. I don't recall.

24 Q. We have been told that we have a couple of

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1 minutes left, so let's change the tape.
2 MS. DUPHILY: Going off the
3 record at approximately 10:00 a.m..
4 (WHEREUPON a brief recess was
5 taken)
6 MS. DUPHILY: Back on the record
7 at approximately 10:07 a.m..
8 Q. I am going to show you a copy of what's
9 been previously marked as PX9. This is the --
10 several witnesses have identified this as the
11 official Board policy on School Board prayer. It's
12 titled Board Prayer at Regular Board Meetings. You
13 testified earlier that the Board does not pray to
14 open special Board meetings or separately executive
15 sessions. Did anyone ever suggest that the policy
16 should be extended to all Board meetings rather than
17 merely regular Board meetings?
18 **A. Not that I recall.**
19 Q. Was that discussed or raised at any time
20 during deliberations, public or private on the
21 School Board Prayer Policy?
22 **A. Not that I recall.**
23 Q. I am going to show you a couple of what I
24 believe to be drafts of the PX9 policy that I just

1 proceedings," and you'll see that although the
2 concept of solemnifying Board proceedings is
3 reflected in line 3 of the proposed policy marked
4 PX11, the language is a little different, do you see
5 that?
6 **A. Yes.**
7 Q. In addition, before the concept of
8 solemnifying the proceedings appears in the proposed
9 policy, there is the language, "Following the
10 rulings of the United States Court of Appeals Third
11 Circuit and past practices of State of Delaware
12 legislative bodies, the Indian River Board of
13 Education may choose to solemnify," do you see that?
14 **A. Yes.**
15 Q. Do you recall any discussion at the Board
16 level of that language, that is following the
17 rulings of the U.S. Court of Appeals Third Circuit
18 and past practices of State of Delaware legislative
19 bodies? Did you discuss that at any time at the
20 Board level?
21 **A. I don't recall.**
22 Q. Do you know what was referred to by past
23 practices of State of Delaware legislative bodies?
24 **A. I would have to answer that question by**

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1 put in front of you. This is a copy of what we have
2 previously marked as PX11.
3 Do you recall having seen this document
4 before?
5 **A. Give me a minute.**
6 Q. Sure. On all of these documents Mr.
7 Hastings, take as much time as you want to to read
8 them.
9 **A. Okay, again I'm sorry, what was your**
10 **question?**
11 Q. Have you ever seen it before?
12 **A. You are taxing my memory.**
13 Q. That's my job.
14 **A. Honestly, I have to testify I honestly**
15 **suppose I have, but I honestly can't remember.**
16 Q. Fair enough. As you read through PX11 do
17 you recognize it as containing most of the language
18 of the final Board policy as adopted?
19 **A. Yes.**
20 Q. But there are some differences, correct?
21 Let me see if I can be specific.
22 **A. Yeah.**
23 Q. The Board policy PX9 begins after the title
24 with the words, "In order to solemnify its

1 **saying, stating this, all of our policies are**
2 **reviewed by the Board attorney, so when a policy is**
3 **structured there is a process in place that we go**
4 **though. So, I'm -- I don't recall the detail or the**
5 **extent of discussion, I just note sitting here today**
6 **knowing when we go though developing policy, that**
7 **we've always reviewed our structure of our policy**
8 **and the language of our policies though our Board**
9 **attorney, and the Board attorney advises.**
10 Q. Let me see if I can clarify that. So, is
11 the answer to my question -- I will restate the
12 question and answer it. My question was do you know
13 what is referred to by past practices of State of
14 Delaware legislative bodies, is the answer to my
15 question no, I don't?
16 **A. Yes, I do.**
17 Q. You do? Okay.
18 **A. I think I do.**
19 Q. What is meant by past practices of State of
20 Delaware legislative bodies?
21 **A. Our legislative bodies here in Delaware do**
22 **open their sessions with prayer on the floor prior**
23 **to beginning.**
24 Q. So, that refers to the General Assembly?

10 (Pages 34 to 37)

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1 **A. I believe so, yes.**
2 Q. Is there a reason why the, and you may not
3 know, but is there a reason why the proposed policy
4 refers to State of Delaware legislative bodies and
5 not State of Delaware school boards?
6 **A. My only opinion to that question would be**
7 **through the last two years the Board members we've**
8 **had discussion formally, informally, that being**
9 **elected officials as we are, that we are considered**
10 **or allegedly should be considered a legislative**
11 **body, therefore this legislative body in this text**
12 **that you used I believe just generically, but again**
13 **that's my opinion.**
14 Q. Oh, I thought you told me a minute ago you
15 thought it referred to the General Assembly?
16 **A. Well, it does. In my opinion it does**
17 **because I know our General Assembly do open with a**
18 **prayer, but there also has been discussion, it's our**
19 **opinion that sitting as a board as we do that we are**
20 **also a legislative body.**
21 Q. Okay.
22 **A. Governing body, governance body.**
23 Q. Governance body or legislative body? By
24 that I mean which term was discussed?

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1 **A. I would say legislative body.**
2 Q. And do you feel that as a Indian River
3 School District Board member you were sitting as a
4 legislative official or -- well let me just stop
5 there. Did you feel that you were sitting as a
6 legislative official?
7 **A. To a degree.**
8 Q. Explain to me how?
9 **A. We are serving a limited area. Our**
10 **legislative body for the state is serving an entire**
11 **constituency of the state. We are serving the**
12 **students of our immediate school district area. To**
13 **me that's the only difference. We are just a**
14 **smaller scale of what our General Assembly serves.**
15 Q. The representatives in the General Assembly
16 are elected from legislative districts, is that
17 correct?
18 **A. Yes.**
19 Q. They are not elected from school districts,
20 correct?
21 **A. That's correct.**
22 Q. Now, a few questions ago you mentioned that
23 there has been discussion in the last two years both
24 formally and informally of the view that the Indian

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1 River School Board is a legislative body. Do you
2 remember when that discussion first occurred at the
3 Board meeting, or outside the Board meeting?
4 **A. I can't say precisely. Obviously it's in**
5 **the wake of this suit.**
6 Q. Well, not necessarily obviously. Is it --
7 did it occur -- did it first occur before the
8 adoption of the Board policy on School Board prayer?
9 **A. I can't say for sure.**
10 Q. Do you recall anyone saying look it's okay
11 for us to have prayer before our meetings because we
12 are a legislative body?
13 **A. That exact statement?**
14 Q. In words or substance, you understand what
15 I mean.
16 **A. I would say in fairness, all of us have had**
17 **discussion regarding that statement, if we or if we**
18 **are not. I would say we all have at one time or**
19 **another.**
20 Q. You all have said in words or substance I
21 think it's okay for us to have a prayer before our
22 meetings because we are a legislative body?
23 **A. Yes.**
24 Q. In the discussions of whether the Board is

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1 a legislative body, has anyone expressed any
2 concerns or reservations or drawn any distinctions
3 between the General Assembly and its functions, for
4 example, and the School Board and its functions?
5 **A. Not to my knowledge.**
6 Q. Legislative bodies pass laws, is that
7 correct?
8 **A. Yes.**
9 Q. And those laws are then enforced by a
10 different branch of government, correct?
11 **A. Correct.**
12 Q. The School Board doesn't pass laws, but it
13 passes policies, correct?
14 **A. Correct.**
15 Q. Unlike the General Assembly the School
16 Board also enforces those policies, correct?
17 **A. Yes.**
18 Q. At any time during the discussion of
19 whether the Board was a legislative body did anyone
20 raise or discuss the fact that students are
21 consistently present at regular Board meetings?
22 **A. I don't recall.**
23 Q. It is a fact that at least since the mid
24 1990s students were consistently present at regular

11 (Pages 38 to 41)

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1 Board meetings?
2 **A. Yes.**
3 Q. And so when you walk into the Board meeting
4 or walk out to take your seat on the stage or where
5 ever the meeting is being held, you expect that
6 students will be in the audience?
7 **A. Most generally, yes.**
8 Q. Sometimes it's only half a dozen students,
9 maybe it's just the ROTC color guard?
10 **A. Yes.**
11 Q. Sometimes, I've seen some minutes where it
12 looked like there were 50 or more students there, is
13 that right?
14 **A. Yes.**
15 Q. Can you think of any regular Board meeting
16 where there have been no students present?
17 **A. Probably in the summer months.**
18 Q. Oh, I should have been clear about my
19 question. Can you think of any regular Board
20 meeting during the academic year when students were
21 not present?
22 **A. No.**
23 Q. All right, I am going to show you another
24 exhibit, this is PX12.

1 Institute and the Neuberger firm, is that the basis
2 for your answer?
3 **A. Yes.**
4 Q. Did anyone ever tell you that the board
5 policy as it was presented to you for a first
6 reading on September 28th had been drafted by the
7 Neuberger firm?
8 **A. I can't recall.**
9 Q. In an earlier answer you told me that your
10 normal process is to have Board policies checked by
11 the Board attorney, correct?
12 **A. Yes.**
13 Q. In the summer and fall of 2004 who was the
14 Board's attorney?
15 **A. If memory serves me correctly it was Jim**
16 **Griffin.**
17 Q. Do you know whether anyone on the Board or
18 the policy committee asked Mr. Griffin to
19 participate in the drafting of the Board policy on
20 School Board prayer?
21 **A. I don't want to assume, I know what happens**
22 **when you assume, but knowing our procedure and the**
23 **policy committee I would -- sitting here today I**
24 **would to -- that was the normal procedure, that it's**

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1 Mr. Hastings, this is a long document, you
2 take as long as you want to to read it, but my first
3 question to you is have you ever seen it before, and
4 you may be able to answer that question without
5 reading the whole document?
6 **A. I may have, but I can't recall. It's been**
7 **two years.**
8 Q. If you look at the fourth page of the
9 exhibit?
10 **A. Uh-hum.**
11 Q. You will see there are five numbered
12 paragraphs at the bottom of the page, the fifth one
13 of which carries over to the next page. With some
14 extremely minor language changes can you confirm
15 that the five numbered paragraphs on PX12 are
16 essentially identical to the numbered paragraphs of
17 the final Board policy? The only change I can tell
18 you is I know that there is in paragraph four just
19 is changed to only, but apart from that do you see
20 any other changes?
21 **A. No.**
22 Q. Do you know who drafted PX12?
23 **A. I suspect the Neuberger firm.**
24 Q. It says up at the top left the Rutherford

1 **reviewed though our Board attorney. So, whether it**
2 **was or wasn't I can't recall if they stated it had**
3 **been. It's just been too long, but that's our**
4 **normal procedure.**
5 Q. Okay, and it's important to get that, what
6 your memory is and isn't correctly. You can confirm
7 that your normal procedure would be to do that, to
8 run it though your Board attorney?
9 **A. Yes.**
10 Q. With respect to Policy BDA.1 you can't
11 remember whether anyone told you that that normal
12 procedure had been followed or not?
13 **A. No, I can't.**
14 Q. I want to -- we've confirmed that the last
15 five paragraphs of PX12 in essence became the final
16 Board policy, but there are four, it's actually
17 three and a half pages of single spaced text that
18 precede that policy text, which are included in
19 PX12, and I want to ask you some questions about
20 that.
21 First of all, the entire document is titled
22 Policy on Prayer at Board Meetings. Was any
23 consideration given to your knowledge about
24 including the three and a half pages of text that

12 (Pages 42 to 45)

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1 appear in this policy before the five numbered
2 paragraphs at the end?
3 **A. Was there any discussion about this**
4 **information?**
5 Q. Yeah, did anybody say we have here a
6 something called a policy on prayer at Board
7 meetings which is four pages long, we should adopt
8 the whole thing?
9 **A. I can't recall.**
10 Q. Do you recall any discussion of the first
11 three and a half pages of this memo at a Board
12 meeting or any portion of it?
13 **A. No.**
14 Q. On the second page of PX12, in the middle
15 of the page, there is a paragraph that begins,
16 whereas, and it reads, "Whereas a member of the
17 American Civil Liberties Union attended one of our
18 school Board meetings was offended by a prayer which
19 was said, and which ended in the name of Jesus
20 Christ, as did the above mentioned prayer by
21 President George Washington, and the ACLU has
22 threatened the Board and School District with a
23 lawsuit if it does not abandon its custom."
24 Does that description of the statement by a

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1 representative of the American Civil Liberties Union
2 at one of your Board meetings, comport with your
3 recollection?
4 **A. That there was a member of the American**
5 **Civil Liberties Union in attendance, is that what**
6 **you are asking?**
7 Q. Well, let's work through it bit by bit. Do
8 you recall a Board meeting at which a member of the
9 ACLU was in attendance?
10 **A. I recall that there was an alleged member**
11 **of the ACLU there, I was never introduced to anyone.**
12 Q. Do you recall someone standing and speaking
13 and identifying herself as a member of the ACLU or a
14 representative of the ACLU?
15 **A. Yes, now that you mention it. Yes.**
16 Q. The next phrase is that that person was
17 offended by a prayer which was said and which ended
18 in the name of Jesus Christ. Do you remember the
19 representative of the ACLU indicating that she was
20 offended by the prayer?
21 **A. I don't recall if she used those exact**
22 **words, no.**
23 Q. I want to draw a distinction for purposes
24 of the next question, between someone who is

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1 personally offended and someone who expresses the
2 opinion that something is unconstitutional or
3 prohibited by law. Would you characterize the
4 remarks of the woman who identified herself as an
5 ACLU representative as a statement of what she
6 believed to be the law or a statement that she was
7 personally offended by the prayer?
8 **A. You are going to have to ask that again.**
9 Q. You understand the distinction I am trying
10 to draw?
11 **A. Yes. Your precise question?**
12 Q. Yes. Do you believe, as you recollect it,
13 were her remarks more in the personally offended
14 camp, or the discussing her opinion of the law camp?
15 **A. I don't recall any of the words, or even**
16 **the gist of what she was saying. Again, it's been**
17 **too long.**
18 Q. Okay. Did anyone in the discussion of the
19 School Board Prayer Policy ever say I think it's
20 important that we have the ability to pray in the
21 name of Jesus Christ?
22 **A. Can you repeat that again, please?**
23 Q. Did anyone during the discussion of Board
24 Prayer Policy, School Board Prayer Policy, say in

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1 words or substance, I think it's important that we
2 have -- retain the ability to pray in the name of
3 Jesus Christ?
4 **A. I can share with you to my best**
5 **recollection in discussions that we've had as**
6 **members of the Board, it's of my opinion and of our**
7 **opinion, my fellow Board members, that we have the**
8 **right to say a prayer asking guidance, divine**
9 **guidance over us to make the proper decisions,**
10 **guiding us in making policy, and those decisions**
11 **that we are charged to do. So, there has been**
12 **discussion about our rights as sitting Board members**
13 **in what we have the right to do.**
14 **Does that answer your question?**
15 Q. In part. In the context of those
16 discussions, did one or more Board members say I
17 have the right to pray in the name of Jesus Christ
18 and I want a policy that preserves that right?
19 **A. No, not to that content.**
20 Q. Did anyone say I have the right to pray in
21 the name of Jesus Christ and we should pass a policy
22 that acknowledges that?
23 **A. No.**
24 Q. The discussion here in the Rutherford

13 (Pages 46 to 49)

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1 Institute memorandum, or what's characterized as a
2 Board Prayer Policy, seems to be focused to some
3 degree on the right to pray in the name of Jesus
4 Christ, and I will tell you why I say that. If you
5 look at the fourth whereas clause on the first page,
6 are you with me?
7 **A. Yes.**
8 Q. There is a prayer attributed to George
9 Washington, and the whole prayer is set forth, but
10 in Italics at the end is -- are the words, "Through
11 Jesus Christ our Lord," do you see that?
12 **A. Uh-hum.**
13 Q. Was there ever any discussion at the Board
14 level, or from Mr. Neuberger if he presented this
15 document personally, as to why the words, through
16 "Jesus Christ our Lord," were Italicized in that
17 prayer?
18 **A. Was there any discussion to why this is in**
19 **here Italicized?**
20 Q. Yes.
21 **A. Not that I recall, no.**
22 Q. Do you have any understanding as to why
23 Mr. Neuberger, or whoever wrote this document,
24 Italicized the words, through "Jesus Christ our

1 paragraph, about a third of the way down the page
2 that begins, "It is the opinion," do you see that?
3 **A. Yes.**
4 Q. It reads, "It is the opinion of legal
5 counsel that since the Indian River Board of
6 Education is a public legislative and deliberative
7 body, it has the right to open its meetings with a
8 prayer." Did you receive the opinion of legal
9 counsel to that effect?
10 **A. From specific counsel?**
11 Q. That was going to be my next question, but
12 I thought I'd ask the preliminary question. In
13 fact, did you get advice to that effect from any
14 legal counsel?
15 **A. I can't recall.**
16 Q. Am I then correct that if you can't recall
17 getting the opinion I guess you can't identify the
18 counsel who gave you the opinion, is that right?
19 **A. No.**
20 Q. On the fourth page of the document, just
21 about in the middle of the page there's a paragraph
22 that reads, "Thus, it is the opinion of legal
23 counsel that the Supreme Court decision in Marsh v.
24 Chambers, which unlike the Coles decision, is

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1 Lord?"
2 **A. I have no idea.**
3 Q. Do you think it, the Italicization -- that
4 can't possibly be a word. Do you think that the
5 fact that those words were put in Italics has any
6 connection to the whereas clause that I read you on
7 the second page referring to the member of the
8 American Civil Liberties Union being offended by a
9 prayer which was said, and which ended in the name
10 of Jesus Christ?
11 **A. Honestly, I don't know. I can't speak for**
12 **Mr. Neuberger. I don't know where he was coming**
13 **from. I don't know.**
14 Q. That's helpful, but it's a little bit
15 different than the question that I asked. Did
16 anybody say anything -- I am sorry you are right, I
17 withdraw the question.
18 Did anybody say anything that indicated
19 there was a linkage between the comments included in
20 the whereas clause in the middle of page two and the
21 fact that the words, "Through Jesus Christ our Lord"
22 are italicized on page one?
23 **A. No, I can't recall.**
24 Q. On page three of PX12, there is a

1 binding precedent in Delaware, compels the
2 conclusion that the Indian River School District's
3 tradition of opening its meetings with a brief
4 invocation is constitutionally permissible."
5 Did the Board get an opinion as stated in
6 that paragraph?
7 **A. I seem to recall somewhere in the timeline**
8 **being advised of such, yes.**
9 Q. Who gave you that opinion, that legal
10 opinion?
11 **A. I could not tell you, I have no idea, or I**
12 **can't recall.**
13 Q. Well, I am going I give you a list of
14 possible suspects, if you will, all right? I am
15 going to give you a list of all the lawyers that
16 have been identified over the course of the last
17 three days and see if that refreshes your
18 recollection, all right?
19 Mr. Griffin was the Board attorney during
20 this period. And I'm going to just identify the
21 ones whose involvement predated August 30, 2004
22 which is as you will see is the date of this
23 document. So, if you got an opinion later than that
24 it couldn't qualify as the opinion of legal counsel

14 (Pages 50 to 53)

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1 that you got reflected here, okay.
2 So, Mr. Griffin was the Board's lawyer.
3 Mr. Neuberger and the Rutherford Institute appeared
4 to have been involved earlier than August 30, 2004.
5 I can also give some names but eliminate them.
6 Mr. Balliger and Mr. Cafferty were involved before
7 August 30, 2004. And of course the Board's current
8 counsel, Mr. Shaw's firm was not involved before
9 then.

10 Can you think of any other candidates to
11 have given you a legal opinion as set forth on page
12 four of this document, other than Mr. Griffin or
13 Mr. Neuberger and the Rutherford Institute?

14 **A. Not to my knowledge.**

15 Q. So, to the extent that you got such an
16 opinion it was -- it's your best recollection that
17 it was either Mr. Griffin or Mr. Neuberger who
18 provided it?

19 **A. I guess through the process of elimination,**
20 **yes.**

21 Q. Now, you testified earlier that you seemed
22 to recall having gotten an opinion to this effect
23 from somebody during this process. Do you know
24 whether you got your recollection that you got that

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1 opinion -- strike that.

2 Do you have an affirmative recollection of
3 when you got that opinion?

4 **A. I don't know, I don't know the precise**
5 **time. I would suspect that it would have to be**
6 **during that summer, early fall of '04.**

7 Q. This question may sound a little funny, but
8 it's, as with all my questions, it's a serious
9 question, is this document, PX12, that opinion? I
10 mean it discusses lots of case law, and it reflects
11 thus it is the opinion of legal counsel.

12 Is this the opinion that you are referring
13 to that you got which suggested that the Supreme
14 Court's decision in Marsh v. Chambers which unlike
15 the Coles decision and so forth, compels the
16 conclusion that the Indian River School District's
17 tradition of opening its meetings with a brief
18 invocation is constitutionally permissible?

19 **A. You're asking if this was what was**
20 **presented to us at that timeline, this exact**
21 **document?**

22 Q. Yes.

23 **A. I'm sorry I can't recall.**

24 Q. Did Mr. Neuberger ever represent the Board?

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1 **A. No.**

2 Q. Did the Rutherford Institute ever represent
3 the Board?

4 **A. No.**

5 Q. Now, do you recall the Board receiving any
6 other document constituting -- strike that.

7 The reason I asked you the question about
8 whether this document is the legal opinion referred
9 to in the document, and which you said you thought
10 maybe you had gotten as a Board, is that sometimes
11 legal opinions come in the form of a written
12 opinion, are you aware of that?

13 **A. Yes.**

14 Q. As an architect have you ever gotten a
15 written opinion from your lawyers?

16 **A. Oh, yeah.**

17 Q. Those pesky lawyers.

18 **A. Uh-hum.**

19 Q. So, you are familiar with the concept that
20 you could get a written legal opinion. With that
21 concept in mind would your answer change, that is to
22 say, does that refresh your recollection that this
23 document, PX12, is the legal opinion that you recall
24 having gotten on the issue of whether the Board

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1 could open its meetings with a prayer?

2 You are looking at me like my question
3 might be unclear, is it?

4 **A. I am not really sure what you are asking.**
5 **cause I mean --**

6 Q. Let me rephrase it.

7 **A. Yeah.**

8 Q. I asked you is this document, PX12, the
9 legal opinion that you got that the Indian River
10 School District's tradition of opening its meetings
11 with a brief invocation is constitutionally
12 permissible, and you said you just didn't know,
13 correct?

14 **A. Yes.**

15 Q. Okay. When you said I don't know, do you
16 mean it could be or it couldn't be? That is to say
17 this might be it, but it might have been that we got
18 something else?

19 **A. True.**

20 Q. Did you -- do you have an affirmative
21 recollection that you received some other written
22 legal opinion on that topic, some other than PX12?

23 **A. You are asking did we?**

24 Q. Yup.

15 (Pages 54 to 57)

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1 **A. It's possible.**
2 Q. You don't recall one way or another?
3 **A. No.**
4 Q. The vote to approve School Board Policy
5 BDA.1 was unanimous, or at least the minutes so
6 reflect. At any time during the discussion in
7 executive session, because I think -- at any time
8 during the Board discussion of Board Policy BDA.1
9 did anyone express any reservations of any kind
10 about the policy?
11 **A. Not that I recall.**
12 Q. Did anyone ask any questions about the
13 policy?
14 **A. There may have been, but I don't recall.**
15 Q. Did you have any reservations about the
16 policy?
17 **A. No.**
18 Q. I asked Mrs. Bunting a few questions
19 yesterday, and at one point she volunteered that
20 there was a north south division in the district,
21 which she ascribed to the historical consolidation,
22 to the consolidation process some years ago. Do you
23 know what she means by the north south division?
24 **A. Yes, I do.**

1 **done legislatively.**
2 Q. Did you perceive the north south division
3 to have any impact or play any role in the
4 considerations of or deliberations on the School
5 Board Prayer Policy?
6 **A. No.**
7 Q. You told me earlier in the deposition that
8 you were appointed to the Delaware State Board of
9 Education in December of 2005?
10 **A. I was appointed on November 8, I sat first**
11 **Board meeting December '05.**
12 Q. Sorry. And you shortly thereafter resigned
13 from the Indian School Board?
14 **A. No, I resigned December 13th.**
15 Q. Were you obligated to resign from the
16 district board because of the new state position?
17 **A. Yes.**
18 Q. Have you attended any Indian River School
19 Board meetings since you resigned as a Board member?
20 **A. Yes.**
21 Q. Could you identify that meeting or
22 meetings?
23 **A. It was April of this year, '06 and we were**
24 **in the midst of campaigning, we had several**

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1 Q. Could you describe for me what you
2 understand it to be?
3 **A. You promised to be finished by 12.**
4 Q. Well, give me the short version.
5 **A. As you probably learned our consolidation**
6 **occurred in '69 and '70. The southern part of the**
7 **district being the resort area, Bethany -- well, in**
8 **that case it was Lord Baltimore, John M. Clayton and**
9 **this area, Selbyville Middle School. Selbyville had**
10 **been consolidated a year prior to the northern part**
11 **of the district, being Millsboro and Georgetown.**
12 **There was a lot of animosity for the**
13 **southern area, this area, joining with the northern**
14 **area of what's now become Indian River School**
15 **District, the Georgetown/Millsboro area. A lot of**
16 **it has to do with tax base. Also the territorial**
17 **division.**
18 **We have two high schools, and for a lot of**
19 **old seasoned tenured folks in this area there is**
20 **still some resentment to that consolidation.**
21 Q. What was the reason for the consolidation?
22 **A. To the best of my knowledge it was at that**
23 **time believed to be a political and economical**
24 **decision from the state by the state. It has to be**

1 **candidates vying for several seats open on the**
2 **Board, and it was during that period of campaign**
3 **that I attended that meeting.**
4 Q. What was it about the fact that it was a
5 period of campaign that caused you to attend the
6 Indian River Board meeting?
7 **A. One of our candidates was in attendance,**
8 **and it was just -- I'm sorry, it was in addition to**
9 **that, it was that period of time, we had, I was**
10 **informed of a meeting that was going to take place**
11 **in executive session, that particular Board meeting**
12 **with our attorneys regarding this case. So, I was**
13 **pry to that information in executive session. It**
14 **was a simultaneous -- actually and that's probably**
15 **confusing.**
16 Q. Yes, sir.
17 **A. The Board election that's how I recall the**
18 **time and date.**
19 Q. Okay.
20 **A. The Board election was taking place in May,**
21 **May the 8th or 9th, but it was April's Board meeting**
22 **that I sat with a candidate that's running for the**
23 **Board seat, and but I went for the purpose of**
24 **attending the executive session meeting to be**

16 (Pages 58 to 61)

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1 **briefed on the latest data pertaining to this case.**
2 Q. I understand. So, you are able to recall
3 the date because of sitting with the candidate?
4 **A. Yes, that's correct.**
5 Q. But you went to the meeting for the purpose
6 of being briefed on this case?
7 **A. That's correct, yes.**
8 Q. Who was the candidate that you sat with?
9 **A. Trish Oliver.**
10 MS.DUPHILY: We are going off the record
11 at approximately 11:03.
12 (WHEREUPON a brief recess was taken)
13 MS. DUPHILY: We are back on the record
14 at approximately 11:11 a.m..
15 Q. Before we broke you mentioned that you
16 attend the April 25, 2006 Board meeting.
17 **A. (Nods head).**
18 Q. I have the minutes of that meeting here, I
19 guess we should mark them.
20 (WHEREUPON Exhibit 53 was marked
21 for identification.)
22 Q. I'm not suggesting to you, Mr. Hastings,
23 that you are wrong, but if you look at page four
24 you'll see the section on other visitors and staff

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1 in attendance.
2 **A. Uh-hum.**
3 Q. And it's possible that I missed it, but I
4 don't see your name listed, do you?
5 **A. I came in late.**
6 Q. Okay.
7 **A. And I sat in the back.**
8 Q. On the first page of April 25, 2006 you'll
9 see executive session agenda, and item 4B is number
10 06-05 PL. Is that the executive session that you
11 attended?
12 **A. I'm sorry you are looking at the executive**
13 **session agenda?**
14 Q. Look at the first page of PX53. You will
15 see down at the bottom there is a line item for
16 executive session agenda?
17 **A. Yes.**
18 Q. And you will see the second item is number
19 06-05 PL. We've had testimony that the PL stands
20 for potential litigation?
21 **A. Yes.**
22 Q. And is that the portion of the executive
23 session that you attended?
24 **A. I believe so, if that personnel -- if that**

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1 **number is appropriate for this case. I don't recall**
2 **the number.**
3 Q. There isn't any other litigation pending on
4 the executive session, is there?
5 **A. Correct.**
6 Q. If you look at pending or potential
7 litigation under the regular agenda, again on the
8 first page, see regular agenda about halfway down
9 the page?
10 **A. Right.**
11 Q. And under item 21 there's an item for
12 pending or potential litigation?
13 **A. Yeah.**
14 Q. There are two different issues, see that?
15 **A. Yes.**
16 Q. 05-01 PL and 06-05 PL. Do you know what
17 those two numbers refer to?
18 **A. Not today I don't.**
19 Q. Is the State Board of Education a
20 legislative body?
21 **A. Well, in the text that we have commented in**
22 **my opinion I will say yes.**
23 Q. Do you know whether the law establishing
24 the State Board of Education identifies it as a

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1 legislative body?
2 **A. I do not.**
3 Q. Do you know what branch of government the
4 State Board of Education is identified with?
5 **A. What branch of government the State Board**
6 **of Education?**
7 Q. Yes, sir?
8 **A. Is affiliated with, it would be education.**
9 Q. Does it fall, do you know whether it falls
10 under the executive branch, the judicial branch or
11 the legislative branch of government?
12 **A. No.**
13 Q. Does the State Board of Education set state
14 wide testing standards?
15 **A. We have some say into that, yes.**
16 Q. Does it determine allocations of state
17 funds to individual districts in the State of
18 Delaware?
19 **A. No.**
20 Q. Who does that?
21 **A. The financial department. The structure**
22 **and bureaucracy, if you will.**
23 Q. As a member of the State Board of Education
24 do you represent a particular geographic region?

17 (Pages 62 to 65)

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1 **A. Not precisely, but when this seat became**
2 **available the State Board is made up of three Board**
3 **members from the northern end of the state, two in**
4 **the middle and two in the southern, and then one at**
5 **large. So, there is kind of geographic area but not**
6 **a precise area. Or not a district, either.**
7 Q. How is north and south delineated, above
8 and below the canal?
9 **A. Well, we only have three counties.**
10 Q. I wondered where Kent County falls?
11 **A. Slightly below.**
12 Q. Does the State Board of Education open
13 meetings with an invocation or prayer?
14 **A. No, we can't.**
15 Q. Does the State Board of Education open its
16 meetings with a moment of silence?
17 **A. No.**
18 Q. Since you joined the State Board has
19 anyone, including you, suggested that the State
20 Board of Education open its meetings with a prayer?
21 **A. No.**
22 Q. Or a moment of silence?
23 **A. No.**
24 Q. Since you joined the State Board of

1 Board's meetings have been conducted in a respectful
2 and solemn manner?
3 **A. In my opinion, yes.**
4 Q. As solemnly and respectfully as the Indian
5 River School District meetings that you attended as
6 an Indian River School District Board member?
7 **A. Yes.**
8 Q. Do you think that the State Board members
9 take their duties seriously based on your
10 observation?
11 **A. Yes.**
12 Q. As seriously as again based on your
13 observations the Indian River School Board's members
14 took their duties?
15 **A. Yes.**
16 Q. Do you have any reason to believe that the
17 State Board needs to open its meetings with a prayer
18 in order to solemnize those proceedings?
19 **A. Repeat that again, please?**
20 Q. Do you have any reason to believe that the
21 State Board needs to open its meetings with a prayer
22 in order in order to solemnize those proceedings?
23 **A. Do I believe there's a need?**
24 Q. Yes.

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1 Education have you raised or discussed that issue
2 with anyone?
3 **A. No.**
4 Q. Has anyone raised it with you?
5 **A. No.**
6 Q. I am just looking for a ballpark number,
7 how many meetings of the State Board of Education
8 have you attended so far?
9 **A. All inclusive or just regular?**
10 Q. Well, let's start with the regular
11 meetings?
12 **A. Regular there are just one a month, but we**
13 **have subcommittees and varied other events but --**
14 Q. So, if the regular meetings are one a month
15 we are talking about roughly speaking 20 regular
16 board meetings you've attended?
17 **A. Regular and other?**
18 Q. No, I made a mistake. Your first meeting
19 was in December of '05?
20 **A. That's correct.**
21 Q. So, you've attended nine or ten regular
22 Board meetings?
23 **A. Yes.**
24 Q. Okay. Is it your view that the State

1 **A. Nice yes, need no.**
2 Q. Has anyone ever suggested to you that the
3 State Board needs to open it's -- I am going to
4 start again. Has anyone ever suggested to you that
5 the State Board needs to open its meetings with a
6 prayer in order to solemnize those meetings?
7 **A. No.**
8 Q. And if I asked you all of those same
9 questions but substituting moment of silence for
10 prayer, would your answers be the same?
11 **A. Yes.**
12 Q. To your knowledge has the State Board
13 historically opened its meetings with an invocation
14 or prayer?
15 **A. Have they opened with a prayer?**
16 Q. Have they had a historical practice of
17 opening their meetings with a prayer?
18 **A. To my knowledge they have not.**
19 Q. Does the State Board of Education have an
20 official policy with respect to opening its meetings
21 with a prayer or a moment of silence?
22 **A. I don't know, but after this I am going to**
23 **find out.**
24 Q. Does the State Board of Education, and this

18 (Pages 66 to 69)

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1 is a general question, does the State Board of
2 Education have any role or responsibility to guide
3 individual districts in conforming their conduct to
4 the law?
5 **A. Can you repeat that one more time, please?**
6 Q. Does the State Board of Education have any
7 role or responsibility in attempting to guide
8 individual districts in conforming their conduct to
9 the law?
10 **A. I would have to respond more so now than**
11 **just as recent as a few months ago. We do again, to**
12 **a degree, surprisingly. We have a school district**
13 **in the state that is in financial, in a major**
14 **financial state, and in light of this the State**
15 **Board really had no say or control or input,**
16 **involvement, but there has just been recently a**
17 **policy that addresses that, that we have the right**
18 **to step in and to assist, do what's necessary to**
19 **help maintain the integrity of that school district,**
20 **if that makes sense.**
21 Q. Yes, sir. And is that a policy that is
22 restricted -- it's the Red Clay District, is that
23 right?
24 **A. No.**

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1 Q. Which district?
2 **A. Appaquinamic.**
3 Q. Is that policy restricted to --
4 **A. No Christina, I'm sorry, I beg your pardon**
5 **it's Christina.**
6 Q. Is that policy restricted to the Christina
7 District or is it, does it apply to all of the
8 districts state wide?
9 **A. All.**
10 Q. And am I correct that the State Board of
11 Education is currently involved in guiding or
12 advising the Appaquinamic School District -- sorry?
13 **A. Christina.**
14 Q. Are you currently involved in advising or
15 guiding the Christina District?
16 **A. Yes.**
17 Q. Is that the only district that you are
18 currently taking up your responsibilities in regard
19 to this particular policy, just the Christina
20 District?
21 **A. To date, yes.**
22 Q. What has the State Board done with respect
23 to the Christina District, you can just speak
24 generically?

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1 **A. Additional independent audit, reviewing of**
2 **their administrative staff, expenditures of the**
3 **district, there are just a few.**
4 Q. Do you know whether the State Board of
5 Education has ever received an inquiry about the
6 Indian River School Board Prayer Policy, or the
7 School Board's practice of opening its meetings with
8 a prayer?
9 **A. If the -- repeat it, please?**
10 Q. Do you know whether the State Board of
11 Education has ever received an inquiry about the
12 Indian River School District's School Board Prayer
13 Policy?
14 **A. I do not.**
15 Q. Do you know whether the State Board of
16 Education has ever received an inquiry about the
17 Indian River School Board's practice of opening its
18 meetings with a prayer?
19 **A. I do not.**
20 Q. To your knowledge has the issue of School
21 Board prayer ever been addressed or discussed by the
22 State Board of Education?
23 **A. At a formal meeting?**
24 Q. Let's limit it first to at a formal

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1 meeting?
2 **A. Not to my knowledge.**
3 Q. And now more broadly, in any context, has
4 the State Board of Education ever addressed the
5 issue of School Board prayer?
6 **A. No.**
7 Q. Mr. Hastings, on the day before the August
8 24 meeting, the really big meeting, there was a
9 special meeting of the Board of -- of the School
10 Board, do you recall that?
11 **A. A meeting the evening prior to our regular**
12 **board meeting?**
13 Q. Yes.
14 **A. It was identified as a special Board**
15 **meeting?**
16 Q. Yes.
17 **A. Honestly I don't recall.**
18 Q. Fortunately I have some documents?
19 **A. I am sure you do.**
20 Q. Mr. Sroka can give you a copy of PX14.
21 These have already been identified as the official
22 minutes and roll call for the meeting, special
23 meeting, of Monday August 23, 2004. As you say in
24 the evening at Sussex Central Middle School library.

19 (Pages 70 to 73)

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1 If you look at the second page of the exhibit you
2 will see that you are listed as having been present?
3 **A. Yes.**
4 Q. The meeting is called to order at 7
5 o'clock, it's a special meeting, and it does not
6 reflect that there was a prayer. I take it you
7 think that there was not a prayer, correct?
8 **A. As tradition would have it, no that would**
9 **be correct.**
10 Q. And then Mr. Helms moved, and Dr. Hattier
11 seconded, to go into executive session one minute
12 later at 7:01 p.m., "To seek advice from our legal
13 counsel regarding potential litigation." The motion
14 passed unanimously 9-0. The minutes then reflect
15 that you came out of executive session at 11:15 p.m.
16 and adjourned at 11:16 p.m., do you see that?
17 **A. Yes.**
18 Q. All right, so we can agree I take it that
19 the entire purpose of this meetings was to seek
20 advice from your legal counsel regarding potential
21 litigation?
22 **A. Yes.**
23 Q. Now, I am going to turn to PX13, these are
24 the minutes of the executive session for the same

1 Q. It's two years ago sir. You don't have any
2 recollection of a four hour executive session
3 meeting the night before the August 24th Board
4 meeting?
5 **A. No, I do not.**
6 Q. Okay, let's turn to the August 24th Board
7 meeting. Were speakers set up in the parking lot so
8 that people standing outside could hear what was
9 going on at the August 24 Board meeting?
10 **A. I believe I heard that that was the case.**
11 **I don't recall seeing the speakers, but I believe I**
12 **heard that they had been.**
13 Q. Do you know who arranged for the speakers
14 to be set up in the parking lot so that people
15 standing outside the building could hear what was
16 going on?
17 **A. No.**
18 Q. Did you ever hear who did that?
19 **A. No.**
20 Q. In addition do the speakers in the parking
21 lot, was there an overflow room also prepared in
22 anticipation for the large crowd at the August 24
23 meeting?
24 **A. Yes. Again I wasn't witness to it but I**

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1 meeting.
2 **A. Uh-hmm.**
3 Q. And as a preliminary matter you will see
4 that the word redacted appears twice on the first
5 page?
6 **A. Yes.**
7 Q. That's a lawyer's term when a portion of
8 the text is deleted probably for privilege purposes.
9 But there is some text remaining which I'd like to
10 ask you about. It says, "During discussion of this
11 issue several Board members expressed that their
12 constituents do not want the Board to change its
13 practice of opening the meetings with a prayer."
14 And my first question is, this issue in that
15 sentence, is that the School Board prayer issue?
16 And it may help to refresh your recollection if you
17 look at the rest of the sentence?
18 **A. Honestly, I would have to say I am**
19 **embarrassed to say this, but I do not recall this**
20 **meeting at all.**
21 Q. Okay.
22 **A. I suspect yes that's what it would refer**
23 **to, but I guess my memory is not as good as it used**
24 **to be.**

1 **understood that it was in a gym, gymnasium, I**
2 **believe.**
3 Q. And that gymnasium was set up not only with
4 speakers but also with a video feed from the actual
5 Board meeting room?
6 **A. I believe so, I was told that, yes.**
7 Q. Mrs. Bunting told me yesterday that she had
8 heard via hearsay a couple of days before the
9 meeting that there were going to be very large
10 crowds at the meeting, did you hear that as well?
11 **A. I would have to say I suspect if there were**
12 **alleged large crowds going to be in attendance I**
13 **would not have heard it until that meeting, that**
14 **special meeting the evening before, but I don't**
15 **recall anything specific.**
16 Q. Am I right that you weren't shocked that
17 there were very large crowds when you arrived for
18 that Board meeting?
19 **A. No, not really, that's correct, I was not**
20 **shocked. That's usually what happens.**
21 Q. What's usually what happens?
22 **A. When there is an issue that's very**
23 **personal, or parents in our community have a**
24 **concern, very strong concern about an issue, there**

20 (Pages 74 to 77)

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1 **would be a moderate to a large attendance to the**
2 **Board meeting. So, that's why I was not surprised**
3 **to see a large turn out.**
4 Q. Can you recall any Board meeting during
5 your 12 year tenure that had a turnout that even
6 approved the turnout at this meeting?
7 **A. One, on one other occasion. And that was a**
8 **negotiation issue between the district and teachers**
9 **union several years ago.**
10 Q. Do you know how many people attended that
11 meeting?
12 **A. I am going to guess maybe 300.**
13 Q. The published reports of the attendance at
14 the August 24th meeting were 6 to 800. That's based
15 on your answer a minute ago, would I be right in
16 understanding that at least for your 12 and a half
17 year tenure the attendance at the August 24th
18 meeting was double, roughly speaking, double the
19 highest attendance at any other Board meeting during
20 your tenure?
21 **A. Yes.**
22 Q. I asked you this question specifically with
23 respect to you and your family, let me ask it
24 generally, do you know of any School Board member

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1 who discussed with church groups their attendance at
2 the August 24 School Board meeting?
3 **A. I do not.**
4 Q. Are you aware of any effort by any School
5 Board member to encourage people to attend the
6 August 24 School Board meeting?
7 **A. No, I do not.**
8 Q. Did you happen to hear Dr. Hattier's
9 comments on WGND shortly before the School Board
10 meeting?
11 **A. The August 24th meeting?**
12 Q. Yes, sir?
13 **A. I don't recall. He's always on the radio.**
14 Q. I'm sorry say again?
15 **A. He's always on the radio.**
16 Q. Did you ever come to hear what Dr. Hattier
17 said on the radio shortly before the August 24th
18 meeting?
19 **A. No.**
20 Q. Did anything occur at the meeting itself,
21 the August 24th meeting that you found disturbing?
22 **A. I guess I would have to comment as we have**
23 **established that's probably the largest numbers of**
24 **parental constituent turn out that we've ever had at**

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1 **a Board meeting.**
2 **When you have large numbers such as that,**
3 **it does have tendency to have effect on the regular**
4 **Board meeting. The regular Board meeting is to**
5 **conduct business, share concerns, discuss issues,**
6 **just conduct business of the slated agenda. I am**
7 **going to have to say that just in general the**
8 **overall ambience of the crowd, and the meeting, was**
9 **a little disturbing, but nothing -- I can't recall**
10 **anything specific that was I'll say alarming, if**
11 **that's what you are asking or referring to.**
12 Q. What was it in your view about the overall
13 ambience of the crowd in the meeting that was a
14 little disturbing?
15 **A. Many of them had signs they were waving, on**
16 **occasion there might -- I believe there was an**
17 **outburst or some larger or someone would comment.**
18 **When you have a group of people together like that**
19 **it can get a little unruly. I understand there was**
20 **some singing prior to the meeting in the gymnasium.**
21 **I don't recall hearing singing in the cafeteria**
22 **where we conducted our meeting, but it was -- it**
23 **proposed for an interesting meeting, let's put it**
24 **that way.**

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1 Q. Did you see the text of any of the signs?
2 **A. Yes.**
3 Q. Did you find the text of any of the signs
4 at least a little disturbing?
5 **A. You asked me if I saw the text, I did see**
6 **the text and I am trying to recall the text. Other**
7 **than the gist might have been save our prayer, God**
8 **bless you, something to that effect.**
9 Q. You mentioned that there were occasional
10 outbursts, what do you mean by that?
11 **A. Outburst may have been a little strong.**
12 **Again, when you have many numbers in a cafeteria**
13 **like that people would be talking in a larger volume**
14 **than what was probably appropriate, and sitting in**
15 **that atmosphere it was disturbing. It disturbed our**
16 **conduct of the meeting. You could hear them**
17 **discussing it or you could hear conversations which**
18 **is typical in a atmosphere of a crowd like that, I**
19 **suspect.**
20 Q. When you get a crowd like that is it your
21 experience that, and by a crowd like that I mean a
22 large crowd, is it your experience that people
23 behave differently than they do on an individual
24 basis?

21 (Pages 78 to 81)

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1 **A. Yes.**
2 Q. What sometimes people call crowd mentality
3 or mob mentality, correct?
4 **A. Yes.**
5 Q. Did that occur on August 24th?
6 **A. I suspect it did.**
7 Q. During the meeting there were frequent
8 shouts of amen after a particular public comments,
9 is that correct?
10 **A. I suspect. I don't recall to date exactly,**
11 **but I suspect.**
12 Q. You testified a little earlier that you
13 can't recall a specific instance that you would
14 characterize as alarming, and I have few questions.
15 I have -- I want to say first that I have
16 been accused in this case of feeling very strongly
17 about the issues in this case, and about protecting
18 my clients and their interests, and I admit that I
19 do. But in asking the next series of questions I
20 want you to know that I don't mean to be
21 disrespectful. I don't mean to belittle or harass
22 you, and that I am trying to develop evidence on
23 issues that I think are relevant to the issues
24 before us.

1 **know to what degree well, yes.**
2 Q. Can you tee that up? I'm going to show you
3 the portion of the meeting at which the prayer was
4 as offered.
5 (AT THIS POINT A TAPE WAS PLAYED)
6 Q. Can we agree that there was enthusiastic
7 cheering when the president asked Dr. Hattier to
8 open the meeting with a prayer?
9 **A. Yes.**
10 Q. Now, I'd like to show you a portion of the
11 public comment that came I think midway through the
12 public comment, and while Mr. Horvath is finding
13 that section I have a few preliminary questions.
14 Do you recall that the public comment
15 section of the meeting was expanded with the Board's
16 approval in order to permit a larger number of the
17 public to comment at the meeting?
18 **A. Yes.**
19 Q. And do you recall that the time that was
20 given to each speaker from the public was reduced
21 from three minutes to two minutes in order to enable
22 even more people to speak at the meeting?
23 **A. I believe that's correct, yes.**
24 Q. All right let's play a portion of the

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1 So, please if I become emotional or try to
2 press you on an issue, I want you to understand that
3 I don't mean any disrespect, all right?
4 **A. Uh-hum.**
5 Q. What I want is your honest opinion about
6 the atmosphere during that meeting, and in
7 particular during the public comment portion of the
8 meeting. And some of the comments made at that
9 meeting by the public. And what I'm going to do is
10 play a portion of the videotape of that meeting and
11 ask you some questions about it.
12 While Mr. Horvath is getting the tape
13 ready, did you know that the meeting was going to be
14 videotaped?
15 **A. No.**
16 Q. That was not the normal practice of the
17 board, is that right?
18 **A. No, that's correct.**
19 Q. The meeting on August 24th opened with a
20 prayer, is that correct?
21 **A. Yes.**
22 Q. And did the crowd shout and yell amen and
23 cheer when the person offering the prayer began?
24 **A. I seem to recall a few comments. I don't**

1 meeting and then I want to ask you some questions
2 about it.
3 (AT THIS POINT THE TAPE OF THE MEETING WAS PLAYED)
4 Q. Did you find Mr. Johnson's comments at the
5 meeting disturbing in any way?
6 **A. Not really.**
7 Q. Did you hear Mr. Johnson refer to the
8 disappearance of Madelyn Murray-O'Hare and his
9 linkage of her disappearance to the movement to
10 remove prayer from the schools?
11 **A. Yes.**
12 Q. And did you hear that Mr. Johnson
13 identified Madelyn Murray-O'Hare and her
14 disappearance immediately after his statement that,
15 "The good Lord has proven that there is one higher
16 authority above the Supreme Court?"
17 **A. I heard that.**
18 Q. Did you understand that the Board meeting
19 that Mr. Johnson intended Mrs. Dobrich and her
20 children who were in attendance, they were in
21 attendance, correct?
22 **A. Yes.**
23 Q. Did you understand that Mr. Johnson
24 intended Mrs. Dobrich and her children to hear those

22 (Pages 82 to 85)

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1 comments about Mrs. O'Hare?
2 **A. I would suspect that he would. I am not**
3 **privy that he would know or knew that they were**
4 **going to be in attendance prior, but I suspect**
5 **knowing when he arrived that they were in**
6 **attendance, yes.**
7 Q. Well, Mrs. Dobrich spoke first, didn't she?
8 **A. I believe that's correct.**
9 Q. And so Mr. Johnson knew that Mrs. Dobrich
10 was in attendance?
11 **A. Yes.**
12 Q. Along with her children?
13 **A. Yes.**
14 Q. Do you think it took a lot of coverage for
15 Mrs. Dobrich to stand up in front of that crowd and
16 speak her mind?
17 **A. I'm sure it did.**
18 Q. Did you think it took courage for her
19 children to stand up and try to say what they
20 thought about this issue?
21 **A. Yes.**
22 Q. Do you remember the conduct of the crowd
23 during Mrs. Dobrich's comments?
24 **A. To a degree. I just recall that perhaps**

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1 **they weren't as appropriate or as kind as one would**
2 **like.**
3 Q. Do you recall that there were boos?
4 **A. Perhaps, I don't recall exactly, no.**
5 Q. Do you remember that there were cat calls?
6 **A. No, I don't recall.**
7 Q. Did you believe the conduct of the crowd
8 during Mrs. Dobrich's public statement was
9 respectful and courteous?
10 **A. I'm sorry, ask that again, please?**
11 Q. Do you believe that the conduct of the
12 crowd at the meeting during Mrs. Dobrich's
13 statements was respectful to Mrs. Dobrich and
14 courteous?
15 **A. Was the conduct of the crowd?**
16 Q. Yes.
17 **A. Respectful, not completely no.**
18 Q. How about when Alex Dobrich, her son, tried
19 to make a statement, was the conduct of the crowd
20 respectful and courteous?
21 **A. I recall he tried to speak or he got to the**
22 **podium and wanted to speak but was unable to, and I**
23 **don't recall exactly how the crowd responded, but I**
24 **believe it was, I believe his sister spoke for him,**

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1 **if I recall.**
2 Q. Yes, sir. Do you recall that Alex didn't
3 speak because people started booing or making
4 remarks about his appearance?
5 **A. I don't recall. I recall as I said the**
6 **young man got up to the podium and not being able to**
7 **speak. I don't recall if things were said subtly.**
8 **I wasn't privy to that, or did not hear if anything**
9 **was said just in a monotone, so I don't -- I could**
10 **not hear if there was anything just said as I said**
11 **in a monotone. But, I don't recall any loud remarks**
12 **or anything of that nature. I just recall him not**
13 **being able to go through with his comment.**
14 Q. Do you know how old he was at the time?
15 **A. I think someone said that he was 12, eleven**
16 **or 12.**
17 Q. Did you notice that Alex Dobrich was
18 wearing a yarmulke when he made his way to the
19 podium?
20 **A. I didn't notice that until he sat down.**
21 Q. Did you notice that during Mr. Johnson's
22 comments that there was laughter from the crowd when
23 he got to the Madelyn Murray-O'Hare, with his
24 description of Madelyn Murray-O'Hare's disappearance

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1 after she had led the movement to remove prayer from
2 schools, did you notice that on the tape?
3 **A. Yes.**
4 Q. And did you recall that that occurred?
5 **A. After seeing that, yes.**
6 Q. And did you find that disturbing?
7 **A. I would have to comment for me in all**
8 **fairness in light of what you are asking here, I**
9 **know Mr. Johnson, what comes -- what remarks that**
10 **gentleman says I am not surprised at the comments**
11 **that he would make. He is the type, I would have to**
12 **say in my opinion, as far as I am concerned he is**
13 **the type of individual when he makes a comment it**
14 **falls to deaf's ear.**
15 **I am not totally answering your question,**
16 **but I may not like what Mr. Johnson says and it**
17 **doesn't surprise me what Mr. Johnson says often. As**
18 **a matter of fact there is probably many occasions**
19 **through the years when he was on the Board, or off**
20 **the Board that I did not agree or like the comments**
21 **that Mr. Johnson would make.**
22 **Whether I would agree or disagree is a**
23 **different matter, but I -- in this case I don't have**
24 **control over the crowd, I don't have control of**

23 (Pages 86 to 89)

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1 **Mr. Johnson. I would have to say that he's --**
2 **perhaps the crowd laughing at that comment is not a**
3 **funny remark, but I would say Mr. Johnson is**
4 **Mr. Johnson.**

5 Q. I want to explore that for a moment. I
6 take it from your answer that you've known
7 Mr. Johnson for some time?

8 **A. Yes, I have.**

9 Q. And in fact, as you say you served on the
10 School Board with him?

11 **A. For a short period of time.**

12 Q. And because you know Mr. Johnson I take it
13 you were able, at least to some degree, to discount
14 the tenor of his comment as we just heard it. You
15 said you could sort of, you know Mr. Johnson, you
16 can take it as a Mr. Johnson comment in effect,
17 right?

18 **A. I guess another way of putting it, rather**
19 **than beating around the bush, Mr. Johnson has a**
20 **reputation of being very crass, and lack of polish,**
21 **or with diplomacy when he speaks. And if he offends**
22 **someone in his comments in my opinion Mr. Johnson**
23 **doesn't care.**

24 Q. Do you know Mr. Johnson carries a gun?

1 answer that question.

2 MR. ALLINGHAM: Well, it's the
3 public reputation of whether Mr. Johnson
4 carries a gun that is relevant to whether
5 Mrs. Dobrich felt threatened, so deposing
6 Mr. Johnson actually be less effective,
7 than deposing members of the public who
8 were present at the meeting on August 24th.
9 secondly, I am fine with your
10 instructing the witness not to answer on
11 privilege grounds, but I think we have a
12 good faith disagreement about whether this
13 issue is relevant.

14 I think that you,
15 unless you tell me otherwise, I think
16 that you must acknowledge that whether
17 Mrs. Dobrich felt threatened at the
18 August 24th meeting is a relevant matter,
19 and I think that whether Mr. Johnson is
20 known to carry a gun is pertinent to that
21 relevant issue.

22 So, I urge you one more time to
23 reconsider your instruction.

24 MR. SHAW: I agree that it could

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1 **A. No, I don't know that.**

2 Q. It wouldn't surprise you, would it?

3 MR. SHAW: I am going to object to
4 the form. It's outside of the relevance of
5 this limited discovery issue, the School
6 Board prayer issue and I am going to
7 instruct you not to answer.

8 MR. ALLINGHAM: I think that
9 question is directly relevant to the
10 important issue of whether Mrs. Dobrich
11 felt threatened at the school Board
12 meeting, and if it was public knowledge
13 that Mr. Johnson carries a gun, that's
14 relevant.

15 So, I urge you to reconsider your
16 instruction.

17 MR. SHAW: The witness
18 answered your question as to whether or not
19 Mr. Johnson carries a gun, or whether or
20 not he knows, he said no he doesn't know.
21 If need further information after that I
22 would suggest you possibly could depose
23 Mr. Johnson, but as for this witness I am
24 going to continue to instruct him not to

1 be relevant to the case as a whole. I
2 disagree that it's relevant to the limited
3 issue of whether or not the School Board
4 prayer is constitutional, and the discovery
5 related to that.

6 MR. ALLINGHAM: Aren't the damages
7 that flow from the constitutional or
8 unconstitutional nature of the School
9 Board prayer affected by whether Mrs.
10 Dobrich felt threatened, and what actions
11 she took thereafter?

12 MR. SHAW: Not as to the specific
13 issue of the prayer.

14 MR. ALLINGHAM: All right, I think
15 our positions are clear, and you have an
16 instruction, I am going to ask a couple
17 more questions.

18 MS. DUPHILY: Going off the record
19 at 12:08 p.m.

20 (WHEREUPON a brief recess was
21 taken)

22 MS. DUPHILY: Back on the record
23 at approximately 12:17 p.m..

24 Q. To sort of summarize the line that we were

24 (Pages 90 to 93)

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1 talking about before the break, you, because you
2 know Mr. Johnson are able to discount to some degree
3 the seriousness of some of the things that he says,
4 is that correct?
5 **A. Yes.**
6 Q. So, that to the extent, and I'm going to
7 just make it an assumption of the question, to the
8 extent that an observer would see the text of
9 Mr. Johnson's comments as potentially threatening,
10 you would view them as less threatening because you
11 know Mr. Johnson, correct?
12 **A. That's correct.**
13 Q. That would not be true of someone who
14 doesn't know Mr. Johnson by definition, correct?
15 **A. I would suspect, yes.**
16 Q. Without taking into account what I'm going
17 to call the Mr. Johnson factor, that you might
18 discount what Mr. Johnson would say, without taking
19 into account the Mr. Johnson factor, would you view
20 the content of his remarks at the August 24th
21 meeting as potentially threatening?
22 **A. I don't believe so.**
23 Q. Did you feel that Mr. Johnson's remarks
24 were directed at Mrs. Dobrich and her family

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1 MR. SHAW: I just want to make
2 sure I don't infringe upon you
3 attorney/client privilege, you guys, I
4 can kind of see the notes as they come up.
5 I just want to be respectful of that.
6 MR. ALLINGHAM: Our questions are
7 as an open book.
8 MR. SHAW: I am sure you don't ask
9 some of them, so.
10 Q. Did you understand the text of
11 Mr. Johnson's comment to be a inference that God
12 would ensure that those opposing prayer would
13 disappear?
14 **A. I didn't take it as such, no.**
15 Q. Is that because of the Mr. Johnson factor?
16 **A. Yes, it is.**
17 Q. In the absence of the Mr. Johnson factor
18 would you believe that it is a reasonable inference
19 from his remarks that those opposing prayer would
20 disappear?
21 **A. Honestly, I don't know where Mr. Johnson**
22 **was coming from that evening.**
23 Q. Now, I am only asking about your
24 understanding. I know that you don't know what

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1 personally?
2 **A. I didn't feel that, no.**
3 Q. Well, no one else in the room that night or
4 in the overflow crowd room, or out in the parking
5 lot, to your knowledge no one else other than Mrs.
6 Dobrich was trying to limit prayer in the Indian
7 River School District, were they?
8 **A. That's correct.**
9 Q. She was the only one?
10 **A. Yes.**
11 Q. She was the only one comparable to the
12 comment that Mr. Johnson made about Mrs. O'Hare's
13 initiating the movement to remove prayer from our
14 schools, isn't that right?
15 **A. Explain that again, please?**
16 Q. Mr. Johnson helpfully for anyone who didn't
17 know who Madelyn Murray-O'Hare was, told the crowd
18 that Ms. O'Hare was the person who initiated the
19 movement to remove prayer from our schools. The
20 only person among the 7 or 800 people in attendance
21 who was in a similar position but with respect to
22 the Indian River School District was Mrs. Dobrich,
23 isn't that right?
24 **A. Yes.**

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1 Mr. Johnson was thinking, but as you sat there did
2 you think that Mr. Johnson was intending an implied
3 threat to Mrs. Dobrich and her family?
4 **A. No, I don't believe that.**
5 Q. Did you think he was joking?
6 **A. No, I don't think he was joking about the**
7 **matter at hand, no.**
8 Q. You don't think his reference to the last I
9 knew Madelyn Murray-O'Hare just disappeared to never
10 be seen or heard from again. I think we all know
11 who she was, she was the person who initiated the
12 movement to remove prayer from our schools. He
13 wasn't joking when he said that, was he?
14 **A. No.**
15 Q. Let me ask a little bit different question.
16 If you don't think that he was intending to threaten
17 Mrs. Dobrich, did you think he was intending to fire
18 up the crowd?
19 **A. Probably, that might have been his**
20 **objective.**
21 Q. And based on the laughter and the applause
22 that came after he spoke, would you agree that he
23 was successful in firing up the crowd?
24 **A. Yes.**

25 (Pages 94 to 97)

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1 Q. Do you know what the time limit was on
2 speakers, public speakers that was imposed at the
3 beginning of the public comment session?
4 **A. Normally we have three minutes, but I**
5 **believe it was reduced to two because of the number**
6 **of folks.**
7 Q. Do you know how long Mr. Johnson was
8 permitted to speak?
9 **A. I didn't time it, but just reviewing that**
10 **video the gavel struck on a couple occasions.**
11 Q. There came a time when the chair told
12 Mr. Johnson that his time was up and he kept
13 talking, right?
14 **A. Yes.**
15 Q. And finally the gavel came down and I
16 gathered from the tape sort of walked back away from
17 the podium continuing to talk, right?
18 **A. Yes.**
19 Q. Do you know how long it was before anyone
20 even mentioned that Mr. Johnson had run out of time?
21 **A. From the time first mentioned till the time**
22 **he walked away from the podium?**
23 Q. That's a bad question and I will withdraw
24 it. Let me ask a little more specific question.

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1 How does the Board enforce its time restrictions on
2 public speakers?
3 **A. That was a very good video of it.**
4 **Fortunately I would sit here and say most of time**
5 **folks are considerate of that time restraint,**
6 **timeline given. On occasion that conduct is not new**
7 **in our board setting when a particular emotional or**
8 **controversial issue is at hand, whether it be this**
9 **or a removal of a athletic coach, or curriculum of**
10 **some nature.**
11 **So, I've seen that take place before in a**
12 **public setting, when folks are, have the privilege**
13 **of addressing the Board. For the sake of our**
14 **timeline we structure, give them a set period of**
15 **time. But on occasion when people are emotional or**
16 **if they are grandstanding or trying to be dramatic,**
17 **they do just as Mr. Johnson did, they will exceed**
18 **their time limit, and the gavel will strike and the**
19 **comments will be made until they walk away from the**
20 **podium.**
21 **So, we've seen it on occasion prior to this**
22 **particular time.**
23 MR. ALLINGHAM: Let's go off the
24 record for a minute.

1 MS. DUPHILY: We are going off
2 the record at approximately 12:25.
3 (WHEREUPON a brief recess was
4 taken)
5 MS. DUPHILY: Back on the record
6 at 12:28 p.m..
7 Q. My question is a little more basic, who
8 keeps the time?
9 **A. The Board president -- well, who keeps the**
10 **time?**
11 Q. Is that Mr. Savage?
12 **A. Yes.**
13 Q. And he lets Mr. Walls or whoever the Board
14 president is at the time know when the two minute
15 period or the three minutes period or the five
16 minute period has expired?
17 **A. That's correct.**
18 Q. Is the Board president the only one who is
19 empowered to tell someone at the podium that they
20 need to sit down?
21 **A. Yes.**
22 Q. Are you aware of instances in which other
23 Board members have spoken up and told the speaker
24 that they need to get away from the podium, or away

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1 from the microphone, stop talking?
2 **A. Another member of the Board other than the**
3 **president?**
4 Q. Yup.
5 **A. It may have occurred, but I don't recall**
6 **any particular date or time.**
7 Q. The last 20 minutes or half an hour we've
8 talked about the atmosphere or the overall ambience
9 of the meeting, which you characterized as a little
10 disturbing, there were outbursts, the crowd
11 mentality, or mob mentality, the crowd got a little
12 unruly. I showed you the Johnson comments and the
13 crowd's reaction both to that with cheers and with
14 laughter during his comments. I showed the clip of
15 the announcement that the meeting would open with a
16 prayer and the raucous reaction to that.
17 Do you have a view as to whether the prayer
18 given on August 24th was effective to make the crowd
19 solemn, respectful and courteous?
20 MR. SHAW: I am going to object,
21 I don't think you showed him the prayer
22 that day.
23 MR. ALLINGHAM: I didn't and
24 that's not what I said.

26 (Pages 98 to 101)

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1 **A. I don't recall what the prayer was that**
2 **particular Board meeting.**
3 Q. I am going to start the question again. It
4 doesn't matter what the prayer was a prayer was
5 offered at the meeting, correct?
6 **A. Yes.**
7 Q. And based on the conduct at that meeting
8 which I summarized a minute ago, do you think
9 whatever the prayer was, do you think it was
10 effective to solemnize the proceedings?
11 **A. I believe it was for the individuals of the**
12 **Board and the purpose it's given, yes.**
13 Q. Okay, and that's very helpful because I
14 wanted to ask you, is the solemnization, which is
15 the purpose of the prayer, as the policy reflects,
16 is that solemnization directed to the Board members
17 and their discharge of their duties, or is it
18 intended to affect everybody in the audience?
19 **A. In my opinion it's for the immediate**
20 **members of the Board.**
21 Q. Okay. And when the policy says in order to
22 solemnize the proceedings, and you've now told me
23 that's the intended recipient of the solemnization,
24 if you will, are the Board members, when the policy

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1 says in order to solemnify the proceedings, what do
2 you understand that to mean?
3 **A. Well, given the responsibility of a Board**
4 **member, and particularly as I know it to be in this**
5 **particular school district, because geographically**
6 **we are the largest in the state, and we have many**
7 **buildings, so the whole facet of our charge**
8 **obviously there are a lot of decisions to be made**
9 **and sometimes they are very controversial, sometimes**
10 **very testy, and also looking at the bigger picture**
11 **there is a lot of financial issues at stake.**
12 **So, sitting there as a member of the Board**
13 **one hopes, or I hope, that I make the very best**
14 **decision I possibly can for the sake of the district**
15 **and the children in the school district, and I want**
16 **all the help that I can get.**
17 Q. When you say, "I want all the help that I
18 can get," that means that if you can invoke some
19 divine guidance to guide your judgment that would be
20 helpful?
21 **A. That's correct.**
22 Q. Is it necessary to offer a prayer publicly
23 in order to invoke divine guidance for those
24 judgments?

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1 **A. I don't suppose it's necessary, no.**
2 Q. You mentioned the financial issues, does
3 the Board deliberate over financial issues in
4 regular session or in executive session?
5 **A. All financial issues are deliberated in**
6 **regular session.**
7 Q. I forgot to ask you a question about
8 Mr. Johnson, and the clip I showed you. Would you
9 agree with me that members of the Board greeted
10 Mr. Johnson warmly when he came to the podium?
11 **A. None of us got up and shook his hand.**
12 Q. No, sir and that's -- fair enough. You
13 recall somebody made a joke about calling him Earl
14 Johnson?
15 **A. Do I recall it, no, no.**
16 Q. In the stack there you have PX9 which is
17 the actual Board Policy which says, the policy
18 opens, it's first phrase is, "In order to solemnify
19 its proceedings the Board of Education may choose to
20 open its meetings with a prayer or moment of
21 silence." Is there any other purpose for the prayer
22 or moment of silence other than to solemnify the
23 Board's proceedings, as you've defined that?
24 **A. No.**

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1 Q. Am I correct that your view is that the
2 Board can equally effectively solemnify its
3 proceedings with a prayer or with a moment of
4 silence?
5 **A. Ask that question again, please?**
6 Q. I'll ask a little bit different question,
7 then I will come back to this one. There is little
8 bit parsing of the language, so you can follow along
9 with me. The policy itself says, "In order to
10 solemnify its proceedings the Board of Education may
11 choose to open its prayers with a prayer or moment
12 of silence." And my question to you is do you
13 believe that a moment of silence is effective to
14 solemnify the Board's proceedings as the policy
15 appears to indicate?
16 **A. I suppose it can.**
17 Q. In fact, when given the opportunity to be
18 the Board member on a rotating basis to open the
19 meeting with a prayer or a moment of silence, you
20 chose a moment of silence, correct?
21 **A. Yes.**
22 Q. And did you believe that that choice,
23 leading a moment of silence, was effective to
24 solemnify the proceedings of the Board on that

27 (Pages 102 to 105)

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1 occasion?

2 **A. Can be, yes.**

3 Q. And on that date in fact you viewed it, you
4 thought that it was effective to solemnify the
5 proceedings, correct?

6 **A. Yes.**

7 Q. Why did you choose to open the meeting with
8 a moment of silence as opposed to a prayer?

9 **A. Quite frankly, diversity.**

10 Q. What do you mean by that?

11 **A. If you recall the minutes we had one Dr.**
12 **Hattier gave a prayer, from a speech of George**
13 **Washington, yadda, yadda, yadda, we've had secular**
14 **prayers, we've had a nonsecular prayer. To my**
15 **knowledge at that point in time we had not had a**
16 **moment of silence, so I just chose at that given**
17 **time, to do a moment of silence.**

18 Q. Is it your view that a moment of silence is
19 the most inclusive approach to solemnifying the
20 proceedings contemplated by the Board policy?

21 **A. Repeat that again?**

22 Q. Is it your view that the most inclusive
23 method to solemnify the proceedings, which is
24 contemplated by the policy, is a moment of silence?

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1 **A. It could be, but I've also made the comment**
2 **that if we, in this particular case, in this**
3 **setting, if we had another Board member of another**
4 **faith sitting, as obviously you'd learned we have**
5 **all ten Board members of Christian faith, but if we**
6 **had any other Board member of any other faith**
7 **sitting there, and they offered a prayer, or the**
8 **Board president as we've typically practiced, asked**
9 **that particular Board member to offer a prayer, and**
10 **whatever faith he is, offers a prayer of his faith,**
11 **then we would be respectful of that.**

12 Q. When you were president of the Board
13 prayers were offered to open virtually every
14 meeting, if not every meeting, correct?

15 **A. Regular Board meetings, yes.**

16 Q. You were the one who called on someone to
17 lead the Board in prayer?

18 **A. Yes.**

19 Q. How did you pick the person that you were
20 going to call on.

21 **A. Generally I chose Mr. Evans. He was my**
22 **vice president at the time, but I mean that really**
23 **did not have relevance to my picking, choosing him**
24 **for asking to say the prayer, but prior, up to that**

1 **point in time there were again as practice,**

2 **tradition, there were two that generally offered the**
3 **prayer, that was Mr. Evans and Mr. Helms, so it was**
4 **either one of the two.**

5 Q. The policy's -- the policy prescribes a
6 particular method of picking the person who would be
7 offered the opportunity to solemnify the proceedings
8 in paragraph two, is that correct?

9 **A. On a rotating basis?**

10 Q. Yes.

11 **A. Yes.**

12 Q. And that's different from the way you
13 picked people to give the prayer during your tenure
14 as Board president, correct?

15 **A. Yes.**

16 Q. And it's different from the way as you
17 understood it, at least, the person had been picked
18 prior to the adoption of the Board Policy?

19 **A. Yes.**

20 Q. And that's because as you understood it
21 there were certain members of the Board who were
22 called on to give the prayer and certain members of
23 the Board who weren't prior to the adoption of the
24 policy?

1 **A. Yes, that is tradition.**

2 Q. Why was that changed in the adoption of the
3 policy?

4 **A. To rotating?**

5 Q. Yes.

6 **A. I don't know specific, but I suspect that**
7 **was offered in the policy to ensure at that setting**
8 **regardless of the faith of any Board member that**
9 **they would have the opportunity to share their**
10 **prayer at the opening of a regular Board meeting.**

11 Q. And to give you an example, if the district
12 elected a Jewish Board member you wanted to make
13 sure that the president didn't just skip over the
14 Jewish Board member every time?

15 **A. Correct.**

16 Q. Or an atheist Board member, or whatever,
17 correct?

18 **A. Correct.**

19 Q. Because if an atheist Board member were
20 elected, that Board member might want to say look I
21 don't believe in a higher power, but I do believe in
22 solemnifying our proceedings, and I urge all of you
23 to join me in reminding myself to take seriously my,
24 you know, my oath as a Board member, whatever, yes?

28 (Pages 106 to 109)

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1 **A. Yes.**
2 Q. Who is the intended audience of the prayer,
3 the ten Board members who are the ones who have to
4 make the decisions at that Board meeting?
5 **A. In my opinion, yes.**
6 Q. And so I take it that the intended audience
7 of the prayer is the ten Board members, it would be
8 just as effective for the ten Board members to stand
9 in the wings and have their prayer and then walk
10 onto the stage as it would be for them to walk onto
11 the stage and then have their prayer, correct?
12 **A. Correct.**
13 Q. Did anybody ever suggest that a policy or
14 practice that would have contemplated that the
15 prayer that would solemnify the proceedings take
16 place before the Board walked out on stage?
17 **A. Not to my knowledge.**
18 Q. I asked you a question about the State
19 Board of Education, and whether it was necessary for
20 the State Board of Education to have a prayer, to
21 open its meetings with a prayer in order to
22 solemnify its proceedings and you answer was, "Nice
23 but not necessary," do you remember that?
24 **A. Yes.**

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1 Q. I am going to ask you the same question
2 with respect to the Indian River School Board. In
3 order for the School Board to solemnify its
4 proceedings, is it necessary for it to open its
5 meetings with a prayer? Would you give me the same
6 answer, nice but not necessary?
7 **A. Nice but not necessary.**
8 Q. And let me follow-up on that. In your view
9 why would it be nice?
10 **A. Again for the comment I made just a moment**
11 **ago, with the charge that we have, the**
12 **responsibilities that we have, we need all the help**
13 **we can get. So, if that's divine help to guide us**
14 **and make all the right decisions, because some of**
15 **the decisions are tough. It's nice to seek that**
16 **extra help.**
17 Q. Fair enough. And in that context, and in
18 the context of the reason why in your view it's nice
19 to do it, you could accomplish that result, that it
20 would be equally nice, if you will, to have the
21 prayer or moment of silence off stage?
22 **A. I suppose, yes.**
23 Q. Because the prayer is not directed to the
24 public who are sitting out in the audience in front

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1 of the stage, correct?
2 **A. In my opinion, that's correct.**
3 Q. Look at PX9 which is the board prayer
4 again. From October 19, 2004, which is when this
5 policy was adopted, until the last meeting that you
6 attended, which -- I'm sorry if I am getting this
7 wrong, which was in December of 2005, correct?
8 **A. Yes.**
9 Q. Was this rotating basis among each
10 individual Board member observed? That is to say,
11 in practice was the opportunity rotated among each
12 individual Board member?
13 **A. The only comment I could make to that would**
14 **be I may have been asked on one other occasion**
15 **during that period of time to ask, to give a prayer,**
16 **but I can't speak to whether or not the president**
17 **had gone in rotation fashion or asked several of the**
18 **Board members in rotation to speak.**
19 **Again, in practice what the Board president**
20 **usually has done is prior to the meeting, once we**
21 **arrive is walk up to that individual and ask them,**
22 **see if they are willing to give the prayer before we**
23 **begin that evening session.**
24 Q. The third paragraph reads, "Such

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1 opportunity shall not used or exploited to
2 proselytize, advance or convert anyone, or to
3 derogate or otherwise disparage any particular faith
4 or belief." Would you please describe for me during
5 your tenure on the Board how you analyzed whether
6 prayers that were offered violated or complied with
7 this limitation?
8 **A. Again ask that, please.**
9 Q. I will ask a preliminary question. Once
10 you all adopted this policy on October 19, 2004, did
11 you evaluate the prayers that were given thereafter
12 to make sure that they complied with paragraph
13 three?
14 **A. To my knowledge, no, we didn't do it at a**
15 **Board setting. No, I don't recall specifically**
16 **analyzing that or discussing that to see if we were**
17 **abiding by item three in this Board or this Prayer**
18 **Policy, no.**
19 Q. What enforcement mechanism is there to make
20 sure that Board members do not use or exploit the
21 prayer opportunity to proselytize, advance or
22 convert anyone or to derogate or otherwise disparage
23 any particular faith or belief?
24 **A. In past practice, to assure us following**

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1 **Board policy, it would be typically Board members**
2 **raising a question, if a question would arise. So,**
3 **individual Board members being responsible, if you**
4 **will. The superintendent bringing an issue to the**
5 **table if we were getting off kilter, or lastly if**
6 **the attorney would happen to be present that evening**
7 **or if something, a question would arise and we need**
8 **to refer it back to the attorney for review.**

9 Q. Paragraph three is here for a reason,
10 correct?

11 **A. Yes.**

12 Q. And if an opportunity was used to
13 proselytize, advance or convert anyone or to
14 derogate or otherwise disparage any particular faith
15 or belief, you would view that as unconstitutional,
16 wouldn't you?

17 **A. Yes.**

18 Q. So, compliance with paragraph three is
19 important?

20 **A. Yes.**

21 Q. I am going to ask you about three prayers
22 and I'd like to tell me whether in your view as a
23 Board member they would have been in compliance with
24 paragraph three or violative of paragraph three. The

1 **setting?**

2 Q. Yes.

3 **A. In our setting. I'd say permissible.**

4 Q. The second prayer is PX45, maybe you can
5 get the original. This prayer reads as follows:
6 "Heavenly Father, thank you for this great occasion,
7 for the work, the effort, the joys and everything
8 that led up to this point in time. Thank you for
9 your guidance in this event. We pray for your
10 direction in the lives of each of these School Board
11 members. We pray that you direct them into the
12 truth, and eventually the truth that comes by
13 knowing Jesus. We also pray that you would be with
14 them at this time. We ask these things in Jesus'
15 name. Amen."

16 Would you view that as violative of
17 paragraph three or permissible?

18 **A. Permissible.**

19 Q. And the last prayer reads as follows, and
20 if you need me to read it twice so you are sure, let
21 me know: "Allah, we offer you our school bus
22 drivers, we offer you our superintendent, our
23 administrators and our secretaries. We offer you
24 our teachers and our parents. Finally we offer you

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1 first one -- I have two of them written down, so you
2 can follow along with me when I read them, and the
3 one is short.

4 The first one is Exhibit 35, and it reads
5 as follows: "Do not put your trust in princes in
6 mortal men who cannot even save themselves. When
7 their spirit departs they return to the ground. On
8 that very day their plans come to nothing. Blessed
9 is he whose help is the God of Jacob, whose hope is
10 in the Lord his God the maker of heaven and earth,
11 the sea and everything in them. The Lord who
12 remains faithful forever.

13 He upholds the cause of the oppressed and
14 gives food to the hungry. The Lord sets prisoners
15 free, the Lord gives sight to the blind, the Lord
16 lifts up those who are bowed down, the Lord loves
17 the righteous. The Lord watches over the alien and
18 sustains the fatherless and the widow, but he
19 frustrates the ways of the wicked. For the wages of
20 sin is death, but the gift of God is eternal life.
21 Through Jesus Christ our Lord."

22 Would that prayer be permissible under
23 paragraph three or violative of paragraph three?

24 **A. Being read from a Board member in that**

1 our students. Peace be unto your prophet Muhammad."

2 Permissible or violative?

3 **A. Permissible.**

4 Q. Now, in reaching the judgment that you
5 reached on each of those prayers, can you describe
6 for me the way you analyze the problem? How did you
7 reach the judgment that you reached that all three
8 prayers were permissible?

9 **A. I commented a moment ago that in my opinion**
10 **sitting there at the Board we need or we'd like to**
11 **have all of the help we can get. If there happened**
12 **to be other Board members at that particular time, a**
13 **particular time, that were of different faith and**
14 **they in this rotating basis were asked or offered a**
15 **prayer, then their prayer of whatever choice would**
16 **be respected.**

17 Q. Can you give me an example or generically a
18 kind of prayer that you would view as violative of
19 paragraph three?

20 **A. The only thing that I could share with you,**
21 **that myself included would probably have difficulty**
22 **with is and we are speaking of prayer, you are**
23 **asking about our prayer, but if a prayer or offer**
24 **for divine guidance to the devil or evil would be**

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1 **just a little difficult, I suspect.**
2 Q. Okay. I am going to give you another
3 example of a prayer and ask you whether you think it
4 would be violative. Suppose that a Board member
5 said, we pray Lord that you enlighten the heathen in
6 our midst and that you inspire them to come to
7 knowledge of your wisdom and goodness. Would that
8 prayer be violative of paragraph three?
9 **A. You need to repeat that one more time.**
10 Q. We pray Lord that you inspire the heathen
11 in our midst to come to know your goodness and
12 wisdom. That's not identical to what I said, but
13 the idea is we pray that the heathen come to know
14 your wisdom and goodness.
15 Would that prayer be violative of paragraph
16 three?
17 **A. I suspect it would be permissible.**
18 Q. So, you would not view such a prayer as a
19 prayer that was used to convert anyone?
20 **A. No.**
21 Q. This one is going to be extreme, but it's
22 to illustrate a point. Suppose that a Board member
23 offered a prayer, Lord, we hope that you will
24 convert to Christianity all the Jews in the

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1 audience. Would you view that prayer as violative
2 of paragraph three?
3 **A. Yes.**
4 Q. Okay. On the issue of how paragraph three
5 is enforced, I think you mentioned three groups or
6 people who could bring to the attention of the Board
7 the possibility that paragraph three had been
8 violated. The first was the Board members
9 themselves, a sort of self policing mechanism. The
10 second was the superintendent who might bring an
11 issue to the Board and the third was the Board
12 attorney, correct?
13 **A. Correct.**
14 Q. Just as a practical matter the Board
15 attorney does not attend every meeting, is that
16 right?
17 **A. That's correct.**
18 Q. In fact, the Board attorney doesn't come
19 unless specifically invited?
20 **A. That's correct.**
21 Q. To your knowledge has the Indian River
22 School District ever had a Board member who was not
23 a Christian?
24 **A. I have no idea. I can't respond to that.**

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1 Q. Well, let me turn the question around a
2 little bit. Are you personally aware of any Board
3 member who was not a Christian?
4 **A. No, no, I am not.**
5 MS. DUPHILY: We are going off the
6 record at approximately 1:03 p.m..
7 (WHEREUPON a brief recess was
8 taken)
9 MS. DUPHILY: Back on the record
10 at 1:05 p.m..
11 Q. Are you personally aware of any
12 superintendent of the district who was not
13 Christian?
14 **A. No.**
15 Q. And to the extent that it matters, are you
16 aware of any school attorney who was not a
17 Christian?
18 **A. No.**
19 Q. Do you think there is any danger that
20 these, all of these I'll call them enforcement
21 mechanisms, the people who represent the enforcement
22 mechanisms as Christians would be less sensitive to
23 whether an opportunity is used to proselytize,
24 advance or convert anyone, than might a person of

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1 another faith?
2 **A. Your specific question would be are we at
3 risk?**
4 Q. That's that -- yeah, I see why you would
5 think that, let me rephrase the question. Every
6 prayer that's been offered has been a Christian
7 prayer, correct?
8 **A. Correct.**
9 Q. The people who represent the enforcement
10 mechanisms are all Christian, correct?
11 **A. Correct.**
12 Q. Do you think it's possible that there is --
13 that the enforcement mechanisms are biased in favor
14 of a judgment that an opportunity is not being used
15 to convert anyone, since the prayers offered are
16 Christian and the people who are judging whether
17 they are proselytizing or converting are also
18 Christian, and hence would not be the object of the
19 conversion, if you will. Do think there is a
20 potential weakness in the enforcement mechanism as a
21 result of that?
22 **A. I believe there could possibly be a
23 potential weakness, but I also don't believe there
24 would be any malice or bias in that setting**

31 (Pages 118 to 121)

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1 **conscious. It's the make up of the Board at that**
2 **particular time, and the administration at that**
3 **particular time.**

4 MS. DUPHILY: We are going off
5 the record at approximately 1:09 p.m..

6 (WHEREUPON a brief recess was
7 taken)

8 MS. DUPHILY: Back on the record
9 at 1:15 p.m..

10 MR. ALLINGHAM: Mark PX54 a
11 document bearing Bates numbers P873 though
12 883.

13 (WHEREUPON Exhibit 54 was
14 marked for identification)

15 Q. Mr. Hastings, we printed these minutes off
16 the web site. Do you have any information as to
17 whether the minutes that are posted on the
18 district's web site are the same as the official
19 minutes except they don't have a signature at the
20 end?

21 **A. I am of the opinion they are always the**
22 **same. They are supposed to be the same.**

23 Q. You are reflected as having been present at
24 the March 22 meeting, and if you look about halfway

1 Q. I'll represent to you that that's the only
2 post Board policy adoption prayer where the
3 substance of the prayer is described in any way. Do
4 you know why this particular prayer was described?

5 **A. No.**

6 Q. At any time during your tenure on the Board
7 did the Board discuss the importance of Dr. Martin
8 Luther King?

9 **A. Not to my knowledge, no.**

10 Q. Do you remember any discussion of wanting
11 to get rid of Martin Luther King Day as a holiday on
12 the Board's calendar?

13 **A. Not to get rid of the holiday. We had a**
14 **issue a couple of years ago where we opted, the**
15 **Board has to choose, select and develop a calendar**
16 **for each year.**

17 Q. Yes, sir.

18 **A. And we had slated Martin Luther Kind Day to**
19 **be a snow day, make up day, and as it so happened we**
20 **were looking at needing to make up a day, and it was**
21 **going to fall on Martin Luther King Day for the kids**
22 **to attend school, and that became an issue. But**
23 **then we were apprised by our attorney that it was a**
24 **federal holiday, but we had never been apprised**

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1 down the first page you will see, "President Walls
2 noted that it is the history of the Board to have a
3 prayer at the beginning of the meeting which is
4 voluntary among the members of the Board of
5 Education, and the audience is not required to
6 participate." Do you know whether that's what
7 president Walls said at that meeting? Does he have
8 a stock disclaimer that he reads?

9 **A. This paragraph here?**

10 Q. Yes, sir?

11 **A. Do I recall if this is exactly what he**
12 **said?**

13 Q. Yes.

14 **A. I can't recall if it was verbatim, but I**
15 **believe that was the gist of it.**

16 Q. And then it says, "President Walls then
17 read a prayer which was part of a speech given by
18 Dr. Martin Luther King." Do you recall that
19 Mr. Walls gave a speech that was taken -- sorry,
20 gave a prayer that was a speech taken -- I will
21 start again. Do you recall that Mr. Walls offered a
22 prayer that was taken from a speech by Dr. Martin
23 Luther King?

24 **A. I vaguely recall, yes.**

1 **prior to that or during discussion of that so**
2 **consequently --**

3 Q. So, it mooted the point?

4 **A. Yes.**

5 Q. Aside from our clients' complaints are you
6 aware of any complaints that came in during your
7 tenure as a School Board member about the use of
8 prayer during School Board meetings?

9 **A. No.**

10 Q. Do you think that the use of prayer during
11 School Board meetings has attracted substantial
12 attention from the public or the media in Indian
13 River?

14 **A. Do I believe it's attracted attention?**

15 Q. Substantial attention from the public or
16 the media?

17 **A. On occasion.**

18 Q. Do you think that the use of prayer during
19 School Board meetings should attract as much
20 attention from the public and the media as it has in
21 the Indian River School District?

22 **A. Let me say this, it probably should not,**
23 **I'm not surprised that it does. I wish our**
24 **curriculum and things, learning matters, would get**

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1 folks as equally riled up in this district as much
2 as this particular issue has.
3 Q. Do you have any idea why it has attracted
4 so much attention in the Indian River School
5 District given that the audience of the prayer is
6 intended to be simply the ten Board members?
7 **A. Initially I thought, I was of the opinion**
8 **that, you know, as general public often do, it was**
9 **misconstrued that people were commenting we don't**
10 **want prayer removed from our school.**
11 Q. Yes, sir.
12 **A. I think that was some sentiment again**
13 **initially. If it's a matter of folks being properly**
14 **informed, given the area, geographic area that we**
15 **are here and I don't know that Delaware has ever**
16 **been considered part of the bible belt, but it**
17 **doesn't surprise me that it has drawn the attention**
18 **of folks. You have a tendency to have very**
19 **conservative people here, traditional people. So,**
20 **am I surprised, no. As I commented a moment ago I**
21 **wish people would get equally as riled when we are**
22 **discussing curriculum.**
23 Q. You mentioned that people originally seemed
24 to perceive this issue as keeping prayer in the

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1 schools. Have you ever heard anyone say that this
2 issue represents the place where we need to draw the
3 line on the removal of religion from our schools?
4 **A. Ask it again, please?**
5 Q. Has anyone said to you in words or
6 substance, maybe we've lost the fight on prayer in
7 the schools, but we need to draw the line, and this
8 is where we should draw the line on the continuing
9 removal of religion from our schools. I'm not
10 saying exactly those words, but in words or
11 substance has someone expressed that concept to you?
12 **A. I can't say or recall if it's been to that**
13 **context, but I know there have been questions or**
14 **comments about the rights that we have as**
15 **individuals wanting to have prayer again for divine**
16 **guidance for the charge at hand. So, are we being**
17 **violated of our right, that is the question that has**
18 **been raised.**
19 Q. Who's raised that question?
20 **A. I know I have.**
21 Q. Is Board Policy BDA.1 intended to serve the
22 interests of the students of the district and the
23 other constituencies of the Board members, or is it
24 intended to serve the interests of the individual

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1 Board members themselves?
2 **A. This policy?**
3 Q. Yes, sir?
4 **A. Is it intended to have affect on the Board**
5 **members?**
6 Q. Is it intended to serve the interests of
7 the students and the Board's other constituencies,
8 or is it intended to serve or protect the interests
9 of the Board members themselves?
10 **A. I would have to say it's derived and its**
11 **content is to provide structure for the Board**
12 **members.**
13 Q. It's intended to preserve the Board members
14 individual rights to offer whatever prayer they
15 want, isn't that correct?
16 **A. Yes.**
17 Q. And more than one Board member has said
18 that during discussions of this Board policy,
19 correct?
20 **A. Yes.**
21 Q. Would you say that at one time or another
22 every Board member expressed that view?
23 **A. I suspect. I can't recall exactly, but I**
24 **suspect so, yes.**

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1 Q. A couple of questions again about the
2 August 24th Board meeting but you won't have to make
3 judgments, at least not as many judgments as I asked
4 you about before. Do you recall that state
5 representatives Hocker and Atkins spoke at the
6 meeting?
7 **A. Yes.**
8 Q. And do you recall that they were joined at
9 the podium by representative Ewing?
10 **A. I believe so, yes.**
11 Q. And did -- do you recall that the
12 representatives provided or read a letter during
13 their public comment section of the meeting?
14 **A. Yes.**
15 Q. And do you recall that that letter said
16 that they as representatives could not recognize the
17 separation of God from state?
18 **A. Maybe. I can't recall specifically. I**
19 **just know that they did read from a letter, but the**
20 **content I can't recall.**
21 Q. Do you think it was appropriate that
22 representatives stood at the podium and expressed
23 their views as representatives on this issue?
24 **A. I'll say it struck me strange.**

33 (Pages 126 to 129)

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1 Q. Why?

2 **A. In this climate, this day and time as we**
3 **are sitting here knowing the delicateness of this**
4 **issue at hand, I was surprised two public officials**
5 **came forward in that light and expressed their**
6 **opinions, being politicians.**

7 Q. Have you ever had anyone tell you that they
8 see this case as about protecting Christian prayer?

9 **A. No.**

10 Q. Have you ever had anyone tell you that they
11 see this case as about protecting Christian values?

12 **A. You are asking me if I had someone**
13 **specifically in my face tell me that's what they**
14 **believe or that's the statement made to such?**

15 Q. Yes, let me take that question first. So,
16 let's take the specific question, have you ever had
17 anyone actually say to your face that they believe
18 that this case is about protecting Christian values?

19 **A. No.**

20 Q. Now, let's be a little more general, have
21 you heard that sentiment expressed, or have you
22 heard that sentiment -- I'll do it in pieces. Have
23 you heard that sentiment expressed?

24 **A. Yes.**

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1 Q. By whom?

2 **A. I can't specifically tell you. I mean in**
3 **the course of these two years, whether it would be**
4 **meeting someone on the street or after a Board**
5 **meeting or whatever what have you, I have to tell**
6 **you I've heard that sentiment but who, whom, I don't**
7 **know.**

8 Q. More than once?

9 **A. Probably.**

10 Q. Would it be fair for me to understand that
11 that is a common sentiment in the Indian River
12 School District?

13 **A. Yes.**

14 Q. I am going to go back to a specific
15 question, have you heard anyone say, again to you
16 use your phrase, to your face, that they understand
17 the School Board Prayer Policy as protecting
18 Christian values?

19 **A. Repeat it, please?**

20 Q. Have you heard anyone say to your face that
21 they view the School Board Prayer Policy as
22 protecting Christian values?

23 **A. No.**

24 Q. Have you heard that sentiment expressed?

1 **A. No, I don't believe so.**

2 Q. So, it's the defense of this case that is
3 viewed as defending Christian values?

4 **A. I believe.**

5 Q. Have you discussed with anyone whether the
6 2006, the results of the 2006 School Board election
7 was an endorsement of the stance the School Board
8 has taken in support of School Board prayer?

9 **A. What the result of the Board election in**
10 **2006?**

11 Q. An endorsement of the stance the School
12 Board has taken in support of School Board prayer?

13 **A. Most definitely.**

14 Q. Is that also your view?

15 **A. That the stance was taken as such?**

16 Q. That the result was an endorsement of the
17 stance that the School Board took?

18 **A. Yes.**

19 Q. Have you ever discussed with anyone whether
20 someone who opposes School Board prayer could get
21 elected to the School Board in Indian River?

22 **A. Interesting question.**

23 Q. Let me rephrase it. Let me just ask the
24 question directly, do you believe that someone who

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1 is upfront about it, who says look I don't support

2 School Board prayer, could be elected to the School
3 Board in Indian River?

4 **A. Would you be referencing just this past**
5 **election particularly or in general? Like five**
6 **years from now or five years prior?**

7 Q. Let me first ask about the 2006 election.

8 Do you believe that anybody who explicitly
9 acknowledged that he was opposed to School Board
10 prayer could be elected School Board in 2006?

11 **A. Board election 2006, if a candidate**
12 **acknowledged that, more than likely in my opinion at**
13 **that particular time he would not have been elected.**

14 Q. Regardless of whatever other policies and
15 qualifications, correct?

16 **A. Correct.**

17 Q. In fact, one of the candidates in the 2006
18 election was in your view an extraordinarily well
19 qualified candidate, that was Jackie Wilson?

20 **A. That's correct.**

21 Q. And her position on School Board prayer was
22 widely understood to be opposition, is that correct?
23 I am not saying what her position was, it was widely
24 reported in the Indian River School District to be

34 (Pages 130 to 133)

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Gregory Hastings

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1 opposition to School Board prayer?
2 **A. I'd call that propaganda.**
3 Q. You heard that propaganda, though, didn't
4 you?
5 **A. Yes.**
6 Q. Did you think it was false?
7 **A. Yes.**
8 Q. Mrs. Wilson actually offered a pretty
9 nuanced position on School Board prayer, did she
10 not?
11 **A. Yes.**
12 Q. Which people either understood or reported
13 to be something different than what it was?
14 **A. Yes.**
15 Q. Do you know whether any of the candidates
16 in the 2006 election campaigned on the issue of
17 School Board prayer?
18 **A. The candidate did not campaign on the issue**
19 **of School Board prayer. None of the candidates did**
20 **to my knowledge.**
21 Q. Did persons seeking to support the campaign
22 of individual candidates make School Board prayer an
23 issue?
24 **A. Yes.**

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1 Q. In your view was it a pivotal issue in the
2 election?
3 **A. In my opinion, yes.**
4 Q. Is it your understanding that the ACLU is
5 prosecuting this case?
6 **A. It's my understanding of that, yes.**
7 Q. And what is you -- what is the basis for
8 that understanding?
9 **A. Initially the representative at the Board**
10 **meeting with Mrs. Dobrich, and the subsequent**
11 **meetings, a few meetings thereafter, so I have no**
12 **reason to believe differently.**
13 Q. Have you ever heard anyone say, has anyone
14 ever told you in the context of discussions of this
15 issue, that the ACLU is antiChristian?
16 **A. I believe that that's very controversial in**
17 **the entire public setting.**
18 Q. What do you mean by that?
19 **A. I think there is many varied opinions of**
20 **that, whether or not the ACLU are antiChristian.**
21 Q. In the course of the -- well, since June of
22 2004, has anyone said to you, or in your presence,
23 that the ACLU is antiChristian?
24 **A. No.**

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1 Q. Have you heard that sentiment expressed?
2 **A. On the street, yes.**
3 Q. Have you ever heard any of your colleagues
4 on the Board express that opinion?
5 **A. Possibly, but I can't recall specifics, no.**
6 Q. Do you believe that the Board is obligated
7 to represent the views of the majority of the
8 constituents in the district?
9 **A. Yes.**
10 Q. Do you agree with Mrs. Bunting that this
11 area is Christian?
12 **A. Not 100 percent.**
13 Q. That is you don't 100 percent agree or you
14 don't agree that it's 100 percent Christian?
15 **A. I don't agree that it's 100 percent**
16 **Christian. I am not sure what she was really**
17 **implying, but I don't believe -- we have other**
18 **faiths in this district, this area. They are, I**
19 **would agree, they are a minority but we have other**
20 **faiths here.**
21 Q. Do you believe that the fact that the --
22 well, let me explore your answer a little bit. This
23 is not a close thing, the vast majority of the
24 constituents in Indian River are Christian, is that

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1 correct?
2 **A. That's correct.**
3 Q. Do you believe that the fact that the vast
4 majority of the constituents in Indian River are
5 Christian should be considered in any way in the
6 consideration of whether the School Board should
7 open its meetings with prayer?
8 **A. I would have to say it basically has to do**
9 **with numbers. Since the majority of our**
10 **constituency are Christian, it's because of that we**
11 **have, in my recollection, in my opinion the members**
12 **of the Board are Christian. And for the reason I**
13 **cited or mentioned earlier that out of respect to**
14 **anyone, whether of any faith any individual that**
15 **sits on the Board is of any other faith other than**
16 **Christian, and offered a prayer, then I believe in**
17 **my opinion that the Board would be respectful of**
18 **that.**
19 **It just happens to be the result of the**
20 **make up in the constituency here in this area.**
21 Q. My question probably wasn't clear. In the
22 Board's consideration of Board Policy BDA.1, the
23 School Board Prayer Policy, do you believe that the
24 Board was obligated to consider, or that it was

35 (Pages 134 to 137)

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1 appropriate for the Board to consider the fact that
2 the vast majority of its constituents were
3 Christians?
4 **A. I'm sorry, I don't understand your**
5 **question.**
6 Q. When you consider a Board policy you try to
7 weigh different factors, presumably, right?
8 **A. Uh-hum.**
9 Q. Do you think it was appropriate for one of
10 those factors to be weighed, to be the fact that the
11 vast majority of the constituents of Indian River
12 are Christians. Is that an appropriate
13 consideration in deciding whether to adopt a policy
14 on School Board prayer?
15 **A. I suppose it's a consideration.**
16 Q. Was it a consideration as you in particular
17 considered the Board policy BDA.1? Did you take it
18 into account?
19 **A. I believe I did.**
20 Q. And do you believe that your colleagues on
21 the Board did as well?
22 **A. I can't speak for them, but I believe they**
23 **tried.**
24 MR. ALLINGHAM: Thank you very

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1 much Mr. Hastings, I have no further
2 questions.
3 MS. DUPHILY: This
4 deposition is ending at approximately 1:56
5 p.m..
6 (END OF DEPOSITION)
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1 CERTIFICATE OF NOTARY
2
3 I, David A. Sroka, a Notary Public, do hereby
4 certify that the witness, GREGORY HASTINGS, was by
5 me first duly sworn to testify to the truth, the
6 whole truth, and nothing but the truth; that the
7 foregoing deposition was taken at the time and place
8 stated herein; and that the said deposition was
9 recorded stenographically by me and then reduced to
10 typewriting under my direction, and constitutes a
11 true record of the testimony given by said witness.
12
13 I further certify that the inspection, reading
14 and signing of said deposition was not waived by
15 counsel for the respective parties and by the
16 witness.
17 I further certify that I am not a relative,
18 employee or attorney of any of the parties, or a
19 relative or employee of either counsel, and that I
20 am in no way interested directly or indirectly in
21 this action.
22 IN WITNESS WHEREOF, I have hereunto set my hand
23 and affixed my seal of office this 8th day of
24 November, 2006.
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